

# Appendix Thirteen

**In The Matter Of:**  
*Tricia Wachsmuth v.*  
*City of Powell, et al.*

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*Dave Brown*  
*October 7, 2010*

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*Bray Reporting*  
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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING  
3 -----  
4 TRICIA WACHSMUTH, )  
5 Plaintiff, )  
6 vs. ) NO. 10-CV-041J  
7 )  
8 CITY OF POWELL, AND IN THEIR )  
9 INDIVIDUAL CAPACITY, TIM )  
10 FEATHERS, CHAD MINER, MIKE )  
11 CHRETIEN, ROY ECKERDT, DAVE )  
12 BROWN, MIKE HALL, BRETT LARA, )  
13 MATT MCCASLIN, ALAN KENT, MATT )  
14 DANZER, OFFICER BRILAKIS, LEE )  
15 BLACKMORE, CODY BRADLEY, KIRK )  
16 CHAPMAN, JOHN DOES #1-#4, )  
17 Defendants. )  
18  
19 DEPOSITION OF DAVE BROWN  
20 9:22 a.m., Thursday, October 7, 2010  
21  
22 Pursuant to notice, the deposition of DAVE  
23 BROWN was taken in behalf of Plaintiff in accordance  
24 with the applicable Federal Rules of Civil Procedure at  
25 270 North Clark, Powell, Wyoming, before Vonni R. Bray,  
Registered Professional Reporter and Notary Public of  
the State of Montana.

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Also Present: Tim Feathers

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1 MR. GOSMAN: Yesterday, I asked officer Miner  
2 to produce the training materials for his Distraction  
3 Device Certificate, which was part of his P.O.S.T.  
4 training. And he kindly offered to do so and  
5 apparently brought the book here yesterday afternoon.  
6 But I didn't get a chance to take a look at it. It's  
7 gone this morning.  
8 I did submit a request for production in May  
9 of 2010 requesting all documentation, handbooks, or  
10 other materials for the entire training of each  
11 individual defendant in the areas of dynamic entry,  
12 deployment or use of diversionary device, execution of  
13 search warrants, use of long guns or rifles in aid of  
14 any police activity and any other professional law  
15 enforcement training received by the individual  
16 defendants.  
17 There was no objection to that made at the  
18 time. And -- actually, I think there was an objection.  
19 But it wasn't relative to whether or not the training  
20 occurred before or after the date that the Wachsmuth  
21 residence was searched.  
22 And so I would request that those materials  
23 be supplied to me. And this request is pursuant to  
24 Rule 37. And I think that's all I need to say about  
25 it. Thank you very much.

<p>DAVE BROWN - October 7, 2010 Page 5</p> <p>1 MS. WESTBY: What's Rule 37? 2 MR. GOSMAN: That is the Rule that requires 3 that you make a good faith effort to resolve any 4 discovery disputes before we bring them to the 5 attention of the Court. 6 MS. WESTBY: I guess I would take issue with 7 your phrasing of this being a certificate. It was a 8 certificate of completion. As the officer stated, 9 there is no certification in that kind of class. That 10 being said, we will duly supplement our discovery 11 responses. 12 MR. GOSMAN: Thank you very much. 13 DAVE BROWN, 14 having been first duly sworn testified as follows: 15 DIRECT EXAMINATION 16 BY MR. GOSMAN: 17 Q. Officer Brown, have you ever given a 18 deposition before? 19 A. No, sir. 20 Q. We will go through a process today in which I 21 will ask you questions, and you will be required to 22 answer them. 23 Do you understand that you are under oath 24 here today, sir? 25 A. Yes, sir.</p>	<p>DAVE BROWN - October 7, 2010 Page 7 Direct Examination by Mr. Gosman</p> <p>1 Q. Have you ever been arrested for a felony? 2 A. No. 3 Q. Have you ever been accused of a crime 4 involving dishonesty? 5 A. No. 6 Q. Have you ever been divorced? 7 A. Yes. 8 Q. And in what court were the divorce 9 proceedings finalized? 10 A. I don't remember. It was either in Arizona 11 or California, because it was split and papers were 12 sent back and forth. So I can't remember. 13 Q. It was a long time ago? 14 A. It was 1984, I want to say. Yes. 15 Q. Did you have a restraining order placed 16 against you at that time? 17 A. No. 18 Q. Was there an application for a restraining 19 order in that or in any other case? 20 A. No. 21 Q. Where did you go to high school, Officer 22 Brown? 23 A. Victor Valley Senior High in Victorville, 24 California. 25 Q. Did you graduate from that high school?</p>
<p>DAVE BROWN - October 7, 2010 Page 6 Direct Examination by Mr. Gosman</p> <p>1 Q. And because of that, it's important that you 2 ask for clarification if there is any question that you 3 don't understand. 4 A. Yes, sir. 5 Q. And if you would allow me to finish my 6 question before you begin your answer. We haven't had 7 as much trouble with that as we might have thus far, 8 but it's always an issue. So there is a tendency to 9 sort of jump in with answers when you can figure out my 10 question before I'm done with it. 11 And we can take a break at any time, and will 12 do so. However, we cannot take a break while a 13 question is pending, do you understand that? 14 A. Yes, sir. 15 Q. What is your full name, Officer? 16 A. David C. Brown. 17 Q. What is your current address? 18 A. 250 North Clark, Powell, Wyoming. 19 Q. Are you currently on any medication that 20 would impair your ability to give truthful answers? 21 A. No, sir. 22 Q. Do you have any medical problems or issues 23 that might interfere with your ability to give truthful 24 answers to this deposition? 25 A. No, sir.</p>	<p>DAVE BROWN - October 7, 2010 Page 8 Direct Examination by Mr. Gosman</p> <p>1 A. Yes, I did. 2 Q. What year was that. 3 A. 1980. 4 Q. Did you have any schooling beyond high 5 school? 6 A. Yes. 7 Q. Describe that, please. 8 A. Victor Valley Junior College, Victorville, 9 California. I have an associates of fire science. I 10 went to Northern Arizona University. I have a 11 bachelors degree in criminal justice. And I went to 12 Boston University and have a masters in criminal 13 justice. 14 Q. And what years did you attend Boston 15 University? 16 A. I graduated in 2006 from there. 17 Q. And let's go ahead and talk about your work 18 history. And let's start after your 2-year college in 19 Victorville. 20 A. I'll have to explain that, if you don't mind. 21 Q. That's fine. 22 A. I worked for the fire service in California 23 while I was going to school. And then I left to get my 24 bachelors degree. So a couple of my classes that I had 25 in northern Arizona, I transferred back to Victor</p>

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Direct Examination by Mr. Gosman

1 Valley College and got my two-year degree.  
2 Q. I understand that. So you started working in  
3 some capacity related to fire control or something?  
4 A. Right out of high school, yes.  
5 Q. Why don't you run through your employment  
6 history for me until you started with the Powell Police  
7 Department?  
8 A. Well, from '80 to '83, I was a full-time  
9 firefighter with the City of Victorville, California.  
10 Left there, went to college. Had a lot of different  
11 jobs. I was a bartender. I cleaned carpets. And I  
12 worked for Sears, I believe, as an apartment manager.  
13 So I had numerous jobs to fit my schedule.  
14 When I graduated, moved to Las Vegas with my  
15 wife, worked for Sears there until 1990, I believe it  
16 was, and then came here.  
17 Q. You've been in Powell since 1990?  
18 A. Yes.  
19 Q. Have you worked for the Powell Police  
20 Department since then?  
21 A. Yes, sir.  
22 Q. Had you had any prior police experience  
23 before coming to Powell?  
24 A. No.  
25 Q. And had you been trained in any law

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1 enforcement prior to that time?  
2 A. Just my degree. But the answer to that is  
3 no.  
4 Q. Okay. When you began working for the Powell  
5 Police Department, what was your rank?  
6 A. Patrol officer.  
7 Q. And have you worked continuously for the  
8 Powell Police Department since 1990?  
9 A. Yes.  
10 Q. And are you a sergeant at this time?  
11 A. No, I'm not.  
12 Q. Let's see, your law enforcement required that  
13 you complete a certification from the law enforcement  
14 academy, correct?  
15 A. Yes.  
16 Q. And did you go through that program?  
17 A. Yes.  
18 Q. When did you do that?  
19 A. It was 1990. It was fall of 1990.  
20 Q. And are there certain requirements for  
21 continuing education under Wyoming law that apply to  
22 you, Officer?  
23 A. As in P.O.S.T. training hours?  
24 Q. Yes.  
25 A. Yes, sir.

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Direct Examination by Mr. Gosman

1 Q. How many hours do they require a year, do you  
2 know?  
3 A. You know, that's changed. I don't know. I  
4 want to say 20 or 40 every two years. I'm not exactly  
5 sure.  
6 Q. Have you maintained those standards?  
7 A. Yes, I have.  
8 Q. And has your standing as a peace officer ever  
9 been challenged or under investigation?  
10 A. No.  
11 Q. Have you ever had any discipline, including  
12 verbal discipline in the last five years, that's not in  
13 your personnel file?  
14 A. No.  
15 Q. Do you know if the Powell Police Department  
16 places disciplinary matters in personnel files?  
17 MR. THOMPSON: Objection as to form.  
18 MS. WESTBY: Join.  
19 THE WITNESS: Can you repeat that?  
20 BY MR. GOSMAN:  
21 Q. If there is a disciplinary matter that comes  
22 to the attention of the Chief of Police with the Powell  
23 Police Department and there's some action taken, does  
24 that action -- is it reflected in the personnel file as  
25 far as you know?

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Direct Examination by Mr. Gosman

1 A. I don't know.  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 BY MR. GOSMAN:  
5 Q. Officer, do you know what witness tampering  
6 is?  
7 A. Yes.  
8 Q. Do you realize that witness tampering is  
9 against the law?  
10 A. Yes.  
11 Q. Why don't you tell me in your own words what  
12 happened between you and Lieutenant Patterson last  
13 weekend at the high school football game?  
14 MS. WESTBY: Object to the form of the  
15 question. You know, the way you phrase that, had we  
16 been in Court, Judge Downes would have sanctioned you.  
17 Don't ever threaten. And in fact -- you know, before  
18 we go any further, let's go take a minute.  
19 MR. GOSMAN: That's fine. Take a minute.  
20 (Recess taken 9:32 to 10:11  
21 a.m., October 7, 2010)  
22 MS. WESTBY: Back on the record. I've had an  
23 opportunity to talk to the witness, advised him of his  
24 rights. He is going to take the opportunity to go talk  
25 to independent counsel and decide how to proceed. And

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1 so we will take a break, or you can call somebody else  
2 in between.  
3 MR. GOSMAN: We can put it off. And if we  
4 have to, we can continue the deposition for that issue.  
5 MS. WESTBY: No, we're not going forward.  
6 He's going to go talk to someone. We'll take a  
7 break --  
8 MR. GOSMAN: No, we're not going to take a  
9 break.  
10 MS. WESTBY: We're taking a break.  
11 MR. GOSMAN: I'm going to pass on that  
12 subject. At the next opportunity --  
13 MS. WESTBY: No.  
14 MR. GOSMAN: -- he can visit with somebody  
15 else --  
16 MS. WESTBY: No.  
17 MR. GOSMAN: -- an attorney about his rights.  
18 MS. WESTBY: This deposition has been stopped  
19 at this point.  
20 MR. GOSMAN: No, it hasn't.  
21 MS. WESTBY: We don't know what's going to  
22 come up in this deposition. It's been stopped at this  
23 point. If you would like to call another officer to  
24 depose while he is doing what he needs to do, based on  
25 your behavior at the beginning of this deposition, we

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1 can do that. But we're taking a break until he has the  
2 opportunity to do what he needs to do based on your  
3 questions.  
4 MR. GOSMAN: Okay. Let's go ahead -- I don't  
5 want to call the magistrate again. You may take  
6 pleasure in that, but I don't.  
7 MS. WESTBY: Well, I would rather call the  
8 judge on this one.  
9 MR. GOSMAN: I'm sure you would. We can call  
10 Downes maybe.  
11 MS. WESTBY: Absolutely. I would love to put  
12 this in front of Judge Downes. I know what his  
13 reaction would be to it.  
14 MR. GOSMAN: Okay.  
15 MS. WESTBY: I've actually seen it.  
16 MR. GOSMAN: All right. Let's go ahead --  
17 now, you're available this afternoon?  
18 MS. WESTBY: Well, he will let us know when  
19 he has had the opportunity to talk to someone.  
20 MR. GOSMAN: All right. You're telling me  
21 that you're stopping this deposition from proceeding on  
22 every other topic, even though I have agreed to go  
23 forward without any further discussion on this topic.  
24 MS. WESTBY: I don't know where this is  
25 going. I'm not going to hold the deposition open. It

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1 needs to proceed in one session. We need to take a  
2 break for him to have the opportunity to talk to  
3 someone. And then we can pick the deposition back up  
4 and we will know what his determination is.  
5 MR. GOSMAN: All right. I wouldn't disagree  
6 with a break. But if you -- I have no intention of  
7 coming back to Powell to take Officer Brown's  
8 deposition. So maybe we will have to call the judge.  
9 But if Officer Brown needs the opportunity to  
10 visit with an attorney about this, I'm okay with that.  
11 Actually, I think we could proceed with the deposition  
12 and still permit him that opportunity. But I'll work  
13 with you on that.  
14 And then we can do Officer Brown later today.  
15 MS. WESTBY: If he's had the opportunity to  
16 meet with someone.  
17 MR. GOSMAN: I think he better --  
18 MS. WESTBY: I think you better not make any  
19 threats --  
20 MR. GOSMAN: All right.  
21 MS. WESTBY: -- to this witness again.  
22 MR. GOSMAN: I'm not making any threats to  
23 the witness.  
24 MS. WESTBY: You have already threatened this  
25 witness.

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Direct Examination by Mr. Gosman

1 MR. GOSMAN: No, I haven't threatened this  
2 witness.  
3 MS. WESTBY: Enough. Enough.  
4 MR. GOSMAN: Okay. Well, I guess we settled  
5 that then, huh?  
6 Officer Brown you're free to go consult with  
7 an attorney. And I would encourage you to do that this  
8 morning.  
9 MS. WESTBY: I would encourage you to stop  
10 advising this witness.  
11 MR. GOSMAN: All right. That's fair enough.  
12 MS. WESTBY: The deposition is at an end.  
13 (Recess taken 10:14 a.m. to  
14 3:16 p.m., October 7, 2010)  
15 BY MR. GOSMAN:  
16 Q. Officer, we began a discussion about  
17 something that happened at the high school football  
18 game last Friday. You've had a chance to visit with an  
19 attorney. Have you been instructed by your attorney --  
20 for instance, you would be advised to exercise a  
21 constitutional right not to discuss that conversation,  
22 or are you free to discuss that conversation?  
23 MS. WESTBY: I am going to advise my client  
24 not to answer that question or any question related to  
25 that or related to Patterson because you have inferred

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1 criminal conduct. And it has nothing to do with this  
2 case.  
3 MR. GOSMAN: Very good. All right. That's  
4 fine.  
5 (Exhibit 31 identified)  
6 BY MR. GOSMAN:  
7 Q. That's going to shorten this deposition a  
8 little bit. Not much, frankly.  
9 Let's go ahead and start with Exhibit 31.  
10 And your training is in there somewhere, Officer Brown.  
11 I believe -- let's see if I can find it. It begins  
12 with the Document No. 658 in Exhibit 31.  
13 A. Okay.  
14 Q. Would you take a minute and summarize your  
15 training as it pertains to the field of dynamic entry,  
16 which is a topic we've been discussing at length in  
17 these depositions. And by dynamic entry, I mean with a  
18 team of officers, usually a breaching team perhaps  
19 involving flashbang devices and a superior show of  
20 force. I'll stop there. Your training as it relates  
21 to those -- that type of tactical entry.  
22 A. Just tell you which ones?  
23 Q. Yes.  
24 A. Well, I took a Patrol Response Critical  
25 Incident, 4/22/93. Looks like on 8/6/01, Patrol

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1 Response to the Active Shooter was a class. 9/13/01  
2 was Patrol Response to an Active Shooter.  
3 You want me to go all the way to the end?  
4 Q. I tell you what, in order to help me,  
5 frankly, keep track of this, let's stop after each one  
6 of those.  
7 Going back to the -- I believe it was in  
8 August of '01 -- yes, the Patrol Response to the Active  
9 Shooter.  
10 A. Okay.  
11 Q. That was a ten-hour course, and that course  
12 was held in Worland, Wyoming. Do you still have the  
13 training materials for that course?  
14 A. If I didn't turn them in with the other  
15 stuff, I don't know where they are at.  
16 Q. And do you remember who instructed in that  
17 course?  
18 A. No, I don't.  
19 Q. Describe for me, if you can, what that course  
20 was about.  
21 A. If I remember right, it was responding to an  
22 active shooter in a school.  
23 Q. I see. Okay. A school setting?  
24 A. Yes.  
25 Q. Very good. Okay. Now, let's go ahead and go

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1 back up. I believe your first one was in '93. That  
2 was a long time ago. But if you can remember anything  
3 about that course and, let's see, can you point it out?  
4 The previous course that you had -- I believe it was in  
5 '93 that dealt with dynamic entry? Or -- yes, dynamic  
6 entry.  
7 A. I don't see one for dynamic entry in '93.  
8 Q. Okay. Let's start on the first page then.  
9 If there's anything on that first page, let's talk  
10 about it.  
11 A. Is it the Patrol Response to Critical  
12 Incident?  
13 Q. Yes, it is.  
14 A. That's on 4/22/93.  
15 Q. Okay. Very good. And that was a 24-hour  
16 course, and it was held in Powell, Wyoming?  
17 A. Yes.  
18 Q. Do you remember anything about that training?  
19 A. It was in Powell, Wyoming.  
20 Q. Okay. Let's go ahead and go on. So we made  
21 it through 2001. Well, we've identified two courses  
22 and we got to 2001. But I may have missed one, so make  
23 sure I haven't done that.  
24 Let's see, 8/22 of '02, Patrol Interdiction  
25 Emergency Response. 8/22/02 -- oh, that's 2002. I'm

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1 sorry.  
2 A. Yes, I got that.  
3 Q. And that looks like it may be the next one.  
4 We discussed the ten-hour course in August of 2001,  
5 Patrol Response to the Active Shooter. And then in --  
6 on 8/22 of '02, there was the Patrol Interdiction  
7 Emergency Response, and that was, apparently, put on by  
8 the law enforcement academy?  
9 A. Yes.  
10 Q. And do you remember -- do you have those  
11 training materials?  
12 A. I believe I turned those in.  
13 Q. And I don't believe I have them. So I'll  
14 just -- let's see, if I can keep track of this stuff.  
15 Okay. Tell me a little bit about that  
16 course.  
17 A. That was held in Douglas. It was held at  
18 the -- I want to say the high school. It could be a  
19 middle school or a high school. But we did some  
20 classroom stuff and we did a lot of stuff in the high  
21 school. And it was, again, an active shooter in a  
22 school.  
23 Q. The entire 40-hour course?  
24 A. I believe so.  
25 Q. Okay. Let's look for the next class, again,

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Direct Examination by Mr. Gosman

1 dealing with dynamic entry.  
2 A. Looks like 10/5 of '05.  
3 Q. And that would be the Patrol Tactical  
4 Response course. Let's see, that's the course that's  
5 put on by Countermeasures Tactical Institute; is that  
6 correct?  
7 A. I believe so.  
8 Q. Or Incorporated?  
9 And there were several other officers of the  
10 Powell Police Department that took that course at the  
11 same time. Do you remember that?  
12 A. Yes.  
13 (Exhibit 27 identified)  
14 Q. And what was -- let's see, there is a manual  
15 for that, and we have it in evidence. It's Officer  
16 Miner's. It's Exhibit 27. I want you to look at  
17 Exhibit No. 27, and tell me if that is the manual that  
18 you remember or the course materials for the Patrol  
19 Tactical Response.  
20 MS. WESTBY: Just for the record, I believe  
21 that you do have all of those records. I think that  
22 first one that you were looking for starts at Brown  
23 Training 00045.  
24 MR. GOSMAN: The Patrol Interdiction  
25 Response?

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Direct Examination by Mr. Gosman

1 MS. WESTBY: No. The one that you asked  
2 earlier about and said you didn't have.  
3 MR. GOSMAN: Earlier today?  
4 MS. WESTBY: Just a couple minutes ago.  
5 MR. GOSMAN: Okay. I don't even remember  
6 which one that was.  
7 MS. WESTBY: It was the school shooter.  
8 MR. GOSMAN: Okay. That was the ten-hour  
9 course. Thank you.  
10 THE WITNESS: It looks familiar.  
11 BY MR. GOSMAN:  
12 Q. Okay. We're still back on the P.O.S.T.  
13 records, and we were at 50-hour Patrol Tactical  
14 Response course in October of '05.  
15 And let's go ahead and run through the rest  
16 of that list and make sure we've covered everything.  
17 A. There's one at the end, too.  
18 Q. And that would be Immediate Action for  
19 Patrol?  
20 A. Yes.  
21 Q. 11/14 of '09?  
22 A. Yes.  
23 Q. Have you ever had any training that was  
24 specifically identified as SWAT training?  
25 A. No.

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Direct Examination by Mr. Gosman

1 Q. Have you ever trained in part of a designated  
2 team at the Powell Police Department?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 BY MR. GOSMAN:  
7 Q. And that would be a sort of a special tactics  
8 team that was designated to handle tactical situations?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 MR. THOMPSON: Join.  
12 BY MR. GOSMAN:  
13 Q. You can answer.  
14 MS. WESTBY: Go ahead, yes.  
15 THE WITNESS: No.  
16 BY MR. GOSMAN:  
17 Q. Have you ever participated in in-service  
18 training at the Powell Police Department that focused  
19 on dynamic entry tactics, including chemical flashbang  
20 devices, entry itself, room clearing?  
21 A. Yes.  
22 (Exhibit 35 identified)  
23 BY MR. GOSMAN:  
24 Q. Let's go ahead and take a look at Exhibit 35.  
25 And if you could go through the documents in Exhibit 35

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Direct Examination by Mr. Gosman

1 and identify for me --  
2 A. Yes, sir.  
3 Q. If you could go through those documents and  
4 identify for me the in-service training that you  
5 participated in that dealt with dynamic entry.  
6 MS. WESTBY: That he recognizes referred to  
7 in this document, correct?  
8 MR. GOSMAN: Yes, ma'am.  
9 THE WITNESS: Do you want policy or hands-on?  
10 BY MR. GOSMAN:  
11 Q. Let's do both, and we'll talk about the  
12 difference. When you get to one, call it out and we'll  
13 go through it one by one.  
14 A. These two I don't recognize these. It  
15 doesn't mean they are not ours. I just don't recognize  
16 this format and stuff.  
17 Q. And you're referring to -- let's see,  
18 Document No. 1818 and 1819?  
19 A. Yes. I'm not saying they are not ours, it's  
20 just this doesn't look familiar.  
21 Q. That's fine.  
22 A. I know these are records. I can't tell you  
23 which ones I was in unless we have a list of who  
24 attended.  
25 Q. Okay. What do you know, Officer, about the

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1 City of Powell Police Department in-service training  
2 program?  
3 MR. THOMPSON: Objection as to form.  
4 MS. WESTBY: Join.  
5 BY MR. GOSMAN:  
6 Q. Can you tell me about it?  
7 A. We try to train montily, if we can.  
8 Q. Is it once a month?  
9 A. They try to do in-squad training on Fridays,  
10 if they can, because of overtime. And then we'll spend  
11 time out at the range, I think it's every other month  
12 we'll go out to the range and do that. Or different  
13 types of training, not necessarily go to the range, we  
14 may run through something, a scenario based.  
15 Q. So at least once a month on a Friday, the  
16 squads meet together?  
17 A. If they're available, yes.  
18 Q. And when I say meet together, do the squads  
19 meet just with the squad members and train as a squad?  
20 A. It could be -- yeah, it could be hands-on.  
21 It could be going over a policy. It could be anything.  
22 Q. All right. Do you know if those  
23 in-service -- is it fair to call that Friday Training  
24 in-service training?  
25 A. I call it Friday Training.

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1 Q. Do you know if there's any kind of a document  
2 kept to confirm that the training occurred, what took  
3 place, and who attended?  
4 A. I don't know.  
5 Q. Have you ever trained with the Powell Police  
6 Department in a setting where a significant group of  
7 officers, more than -- let's say more than six, have  
8 actually done simulations of tactical entries involving  
9 room clearing, breaching tactics, flashbang, that kind  
10 of thing?  
11 MR. THOMPSON: Objection as to form.  
12 MS. WESTBY: Join.  
13 Go ahead and answer the question.  
14 THE WITNESS: I've trained, I can't tell you  
15 if there were six people or four people. We have  
16 trained.  
17 BY MR. GOSMAN:  
18 Q. On the evening of the 24th of February, I  
19 believe there were over ten officers involved. The  
20 exact number is not in my mind. Have you ever trained  
21 with a group that large in these Friday sessions?  
22 MS. WESTBY: Object to the form of the  
23 question.  
24 MR. THOMPSON: Join.  
25 Unless I tell you not to, just go ahead and

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1 answer.  
2 THE WITNESS: Okay. We have had training  
3 with the department there, if that's what you're  
4 asking, yes. We've had department training days with  
5 the whole department there. Minus a couple of officers  
6 who were covering the street.  
7 BY MR. GOSMAN:  
8 Q. Sure.  
9 And on those department training days, did  
10 you cover the subject of dynamic entry, do you know?  
11 A. I'm pretty sure we have, yes.  
12 Q. Would they have been part of the in-service  
13 training that we've been talking about, or is this  
14 something else?  
15 A. This is just one of our training days.  
16 Q. Training days. Describe what training days  
17 are for me, then.  
18 A. When I talk about in-service, I'm -- it's  
19 Friday Training. I mean, some people may call it  
20 in-service. Some may call it something else. But it's  
21 Friday Training where the shifts get together their own  
22 shifts, maybe a group of four will train, school  
23 resource officers and myself may be in the morning  
24 group or the afternoon group.  
25 And then we have range day or whatever where

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1 we all go out to the range and it may be a qualifying  
2 shoot day. It may be a moving and shoot. It may be  
3 something different.  
4 Q. Okay. And in that setting, you have the --  
5 more or less, the whole department together?  
6 A. More or less, yes.  
7 Q. Okay. And have you trained in simulations of  
8 dynamic entries as a group in that setting before?  
9 MS. WESTBY: Object to the form of the  
10 question. Asked and answered.  
11 MR. THOMPSON: Join.  
12 THE WITNESS: We have trained, yes. I'm not  
13 saying all together, all 15 or 18 of us at one time.  
14 But we've been out there and trained.  
15 BY MR. GOSMAN:  
16 Q. And is that in the groups you talked about,  
17 you know, between four and six?  
18 MS. WESTBY: Object to the form of the  
19 question. That misstates his testimony.  
20 BY MR. GOSMAN:  
21 Q. If it does, I'll ask the officer to clear it  
22 up.  
23 MS. WESTBY: And I make my objection.  
24 MR. GOSMAN: Yes.  
25 MR. THOMPSON: Join.

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1 THE WITNESS: If I could back up a second.  
2 BY MR. GOSMAN:  
3 Q. Yes.  
4 A. It may not always be at the range. We may  
5 have gone to the fairgrounds one day. So it could be  
6 different.  
7 And if you would repeat your last question,  
8 please.  
9 Q. Were you training in groups of larger numbers  
10 than the four to six that we talked about previously?  
11 A. I don't remember.  
12 Q. Okay. What was your role in the execution of  
13 the search warrant on the Wachsmuth residence on the  
14 24th of February 2009?  
15 A. My assignment was the backyard.  
16 Q. And how did you learn about this warrant  
17 service?  
18 A. I was called at home.  
19 Q. Do you know approximately what time that was?  
20 A. It was in the evening  
21 Q. The warrant apparently was served around  
22 9:15, when in relation to 9:15 was it that you first  
23 received the call?  
24 A. I don't remember. There's probably something  
25 I could look at that would tell me the time I arrived.

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1 (Exhibit I9 identified)  
2 BY MR. GOSMAN:  
3 Q. Okay. Let's look at Exhibit I9 briefly  
4 because I believe that's the document that we're  
5 referring to. And can you quickly find the time of  
6 your arrival at the police station that night? I see  
7 some entries on Page 2 of that CAD report. Dave Brown  
8 and it's dispatched at I410. That's quite a bit  
9 earlier in the day.  
10 A. Yeah, these are -- I'm trying to remember how  
11 these work. These are going to be different dates and  
12 stuff. That -- I410 could have been the next day I was  
13 working on the case or something. Because it goes I410  
14 and 0926 then I451. So it could have been I was  
15 working on the report when I called and said, "Put me  
16 on this case."  
17 Q. I see.  
18 A. So I want to -- looking at this, 2112, I was  
19 en route. So I would say it was prior to that.  
20 Q. So let's see, 2112, that was -- that was just  
21 a few -- that was en route to the Wachsmuth residence?  
22 A. Yes, they don't have me logged in when I  
23 arrived at the station.  
24 Q. And -- all right. So you just don't remember  
25 when it was that you arrived at the station in terms of

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1 time relative to the 9:15 period when the Wachsmuth  
2 house was searched?  
3 A. No, sir.  
4 Q. When you arrived in the police station, what  
5 did you first see in terms of -- relevant to this case?  
6 A. I believe we all went downstairs to the  
7 classroom where we briefed.  
8 Q. Okay. And what do you remember of the  
9 briefing?  
10 A. We were told what was going on and informed  
11 of a plan.  
12 Q. And who was present when you arrived there?  
13 A. I don't -- myself, I believe Sergeant Kent  
14 was there. And some other officers. I can't tell you  
15 exactly when I arrived.  
16 Q. Was all of the group assembled there at some  
17 point before you left for the Wachsmuth residence?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Join.  
21 THE WITNESS: No.  
22 BY MR. GOSMAN:  
23 Q. Okay. Who wasn't there?  
24 A. I believe Officer Lee Blackmore was over  
25 towards the residence.

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1 Q. You didn't see him there at the briefing?  
2 A. Not at the briefing, no.  
3 Q. What were you told about Bret Wachsmuth and  
4 the potential threat that might be involved there?  
5 A. I was informed that Bret Wachsmuth was  
6 paranoid, would peek out the windows, had guns, and  
7 would carry a gun on him.  
8 Q. Do you remember anything else specifically?  
9 A. He was growing marijuana plants there.  
10 Q. Did you know how many marijuana plants were  
11 being grown?  
12 A. I want to say I heard the number ten to 20.  
13 Q. Okay. And so who was in charge?  
14 A. I believe Sergeant Kent was in charge.  
15 Sergeant Chretien was in charge of the planning.  
16 Q. Did either of those two Sergeants at any time  
17 say to you that we believe that Bret Wachsmuth may pose  
18 a threat to officer safety, and for that reason we are  
19 going to use a tactical team to enter his home?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: I don't remember that.  
24 BY MR. GOSMAN:  
25 Q. Had the decision already been made to use the

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1 tactical team when you arrived?  
2 A. We don't have a tactical team.  
3 Q. Okay. Thank you.  
4 Had the decision already been made to use a  
5 group of officers to accomplish a dynamic entry at that  
6 time?  
7 A. Yes.  
8 Q. Okay. Did you participate in that decision  
9 at all?  
10 A. I was there during it, yes.  
11 Q. During the decision to use a tactical team?  
12 A. We don't have a tactical team.  
13 Q. I'm sorry. To use a group of officers for  
14 the dynamic entry.  
15 A. I was there during the planning process, yes.  
16 Q. And I think it's fair to say, Officer, that  
17 they wouldn't have -- that they had already decided to  
18 use the dynamic entry before they called you from home  
19 to come down to the station; is that fair to say?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: You would have to ask Sergeant  
24 Chretien and Sergeant Kent --  
25

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1 prepared these notes. Do you know her?  
2 A. Yes.  
3 Q. Did you see her that night?  
4 A. Yes, I did.  
5 Q. Did you observe her taking notes?  
6 A. Yes, I did.  
7 Q. Do you know whether she was designated to  
8 take notes that night?  
9 A. I don't know.  
10 Q. Have you ever seen -- did you -- have you  
11 seen this document before, Exhibit 10?  
12 A. Yes.  
13 Q. And do you understand that these are the  
14 notes that Marris Torczon took of the previous session  
15 that night?  
16 MS. WESTBY: Object to the form of the  
17 question.  
18 MR. THOMPSON: Join.  
19 THE WITNESS: I don't know if these are the  
20 exact notes, but they look familiar.  
21 BY MR. GOSMAN:  
22 Q. Do you recognize Ms. Torczon's handwriting?  
23 A. No.  
24 Q. Take a minute and look at Exhibit 10 -- let's  
25 do this: There's a list of officers on the left-hand

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1 BY MR. GOSMAN:  
2 Q. So was there, in fact, while you were at the  
3 briefing session, a discussion about what approach to  
4 take to accomplish this warrant service?  
5 A. Yes.  
6 Q. And what were the items that were discussed?  
7 A. They were talking about securing, you know,  
8 who's going to go to the front, who's going to go to  
9 the back, those things.  
10 Q. Okay. You didn't participate in any  
11 discussion about whether or not you could just simply  
12 perform a knock-and-talk warrant service in this case?  
13 A. No, I didn't.  
14 Q. Or whether there were other methods of  
15 accomplishing the service of that warrant, other than  
16 the use of a team in a dynamic entry setting?  
17 A. I don't remember if we discussed that or not.  
18 Q. Do you know if the Chief showed up that  
19 night, and that would have been prior -- during the  
20 briefing phase of the operation?  
21 A. I don't know. Not while I was there.  
22 (Exhibit 10 identified)  
23 BY MR. GOSMAN:  
24 Q. Take a minute and let's turn to Exhibit 10  
25 for a moment. It appears that Marris Torczon may have

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1 column of that first page, do you see that?  
2 A. Yes.  
3 Q. And there appears an assignment to the right  
4 of each name?  
5 A. Yes.  
6 Q. Is this -- does this list accurately reflect  
7 the assignments that you understood that were given  
8 that night for the Wachsmuth warrant service?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 THE WITNESS: It looks -- the top of this  
12 where they have Brown, Brilakis, and Blackmore in the  
13 garage, they had me in that area on the back door. So  
14 otherwise, it looks familiar, yes.  
15 BY MR. GOSMAN:  
16 Q. Okay. Were you aware, for instance, that the  
17 entry team was to consist of officer Chapman, Officer  
18 Danzer, Officer Eckerdt -- Sergeant Eckerdt -- is it  
19 Sergeant Chretien?  
20 A. Yes, sir.  
21 Q. Sergeant Chretien, Officer Hall, and Officer  
22 Hall?  
23 A. And then I believe Miner, too.  
24 Q. Yes.  
25 A. I don't know if you said Miner.

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1 Q. I did not.  
2 A. That sounds familiar yes.  
3 Q. And were you aware that Sergeant Kent and  
4 Officer McCaslin were to deploy the flashbang device?  
5 A. Yes.  
6 Q. Were you told this was a knock-and-announce  
7 warrant?  
8 A. Yes.  
9 Q. Were you told that -- now, I'm sort of going  
10 down through this document here.  
11 A. Okay.  
12 Q. There are no more than three adults in the  
13 home, do you remember being given that information that  
14 night?  
15 A. I know they talked about who was in the  
16 house. I don't remember if it was three adults or not.  
17 Q. Okay. It says there that there was a  
18 ten-year-old child, do you remember hearing anything  
19 about a child being present in the house?  
20 A. I heard somebody say there was a young person  
21 that went in. I couldn't tell you age.  
22 Q. Okay. And did you understand that if Bret  
23 Wachsmuth were encountered, he was to be taken from the  
24 home? It says, "Scoop Wachsmuth out."  
25 A. I believe everyone was under arrest there,

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1 Q. Do you remember officer -- Sergeant Chretien  
2 telling you that the plan was that the -- one of the  
3 officers would knock and announce and if the door did  
4 not open immediately, the door would be breached?  
5 MR. THOMPSON: Objection as to form.  
6 MS. WESTBY: Join.  
7 THE WITNESS: I don't remember that.  
8 BY MR. GOSMAN:  
9 Q. Okay. Now, there is something here, 20 to 30  
10 plants. And I think you mentioned ten to 20 plants,  
11 you thought you may have heard that number?  
12 A. Right.  
13 Q. And as you'll notice, the document does have  
14 a notation indicating 20 to 30 plants.  
15 A. Twenty sounds familiar, yes.  
16 Q. So 20 to 30 was probably what you heard?  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 MR. THOMPSON: Join.  
20 MS. WESTBY: No. It completely misstates his  
21 testimony.  
22 MR. GOSMAN: He did say ten to 20.  
23 BY MR. GOSMAN:  
24 Q. I'm not trying to get you to change your  
25 testimony. But when you look at the document, does the

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1 yes.  
2 Q. Were you given the description of the  
3 vehicles that the Wachsmuth's drove?  
4 A. I believe I was.  
5 Q. And jumping ahead just a moment. When you  
6 arrived at the scene that night, did you notice that  
7 one of the vehicles was missing -- was not in front of  
8 the house?  
9 A. I was not in that area. I couldn't.  
10 Q. Okay. Do you remember a discussion about the  
11 sequence of events that were to take place with respect  
12 to the entry into the home?  
13 A. As in?  
14 Q. Well, I'm referring specifically to a list of  
15 things that are on the right-hand side of that  
16 Exhibit 10, about halfway down, knock door, police,  
17 search warrant, et cetera.  
18 A. Yes.  
19 MR. THOMPSON: Objection as to form.  
20 Go ahead.  
21 MS. WESTBY: Join.  
22 THE WITNESS: Yes  
23 BY MR. GOSMAN:  
24 Q. Do you remember those things being discussed?  
25 A. Yes.

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1 number 20 to 30 sound correct?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 MR. THOMPSON: Join.  
5 Go ahead.  
6 THE WITNESS: Ten to 30. Twenty sounds  
7 correct, but ten to 20.  
8 BY MR. GOSMAN:  
9 Q. Very good. Do you remember seeing a diagram  
10 of the interior of the house there at the briefing?  
11 A. I believe I did, yes.  
12 Q. Do you remember seeing any diagram of the  
13 downstairs?  
14 A. I don't remember that. I mean, I don't  
15 remember yes or no.  
16 Q. Do you remember -- let's see, who spoke at  
17 the briefing?  
18 A. Sergeant Chretien did.  
19 Q. Did anyone else?  
20 A. I'm sure others spoke, too.  
21 Q. But in terms of the briefing and the  
22 assignments made, the information that was provided to  
23 the officers at the briefing; who provided that  
24 information?  
25 A. Well, Sergeant Chretien was one. I'm sure --

<p>DAVE BROWN - October 7, 2010 Direct Examination by Mr. Gosman</p> <p>Page 41</p> <p>1 I don't know if there were any others or not. 2 Q. Did Sergeant Kent actually address the group 3 and supply information about the operation and the 4 information that was available? 5 A. I don't remember. 6 Q. After the briefing, who did you travel to the 7 Wachsmuth residence with? 8 A. Deputy County Attorney Jonathan Davis went in 9 my vehicle. 10 Q. So Deputy County Attorney Jonathan Davis was 11 present for the service of the warrant, correct? 12 A. He went to the scene with me, yes. 13 Q. What did he do? 14 A. He stayed back while we did everything. And 15 then I left and couldn't tell you. 16 Q. When you say "he stayed back," where did he 17 stay? 18 A. He was behind the fence. 19 Q. Was Jonathan Davis in the briefing session? 20 A. I don't remember. 21 Q. Well, how did you happen to hook up with him 22 to go over to the Wachsmuth residence? 23 A. At the station. I don't remember if he was 24 in the briefing or not. 25 Q. Do you know if Jonathan Davis assisted in the</p>	<p>DAVE BROWN - October 7, 2010 Direct Examination by Mr. Gosman</p> <p>Page 43</p> <p>1 you were going to coordinate your efforts to accomplish 2 this entry? 3 A. There would be radio contact, that maybe the 4 guys in the front were moving up. And we were moving 5 to the fence and we were to get over the fence. 6 Q. Okay. The idea was that you would coordinate 7 the efforts of the different teams so that they could 8 be at the house at the same time? 9 A. Yes. 10 Q. All right. And if I remember correctly, your 11 team was to create a distraction by breaking a window; 12 is that correct? 13 A. Yes. 14 Q. What was the cue for you to have broken the 15 window and created that distraction? 16 A. I believe it was when they 17 knock-and-announced. 18 Q. Okay. And apparently that didn't happen? 19 A. No. 20 Q. And tell me what did happen. You're 21 approaching the house with your team, correct? 22 A. Yes. 23 Q. And Jonathan Davis is not actually with the 24 group at that time? 25 A. He's behind us. He's not -- he's with us but</p>
<p>DAVE BROWN - October 7, 2010 Direct Examination by Mr. Gosman</p> <p>Page 42</p> <p>1 planning for the execution of the warrant? 2 A. I believe he did. 3 Q. What do you base that on? 4 A. I'm sorry. The execution of the warrant? 5 Q. Yes. 6 A. No. I don't know. I'm sorry. 7 Q. Okay. You arrived at the residence with the 8 Deputy County Attorney; and what did you do then? 9 A. We parked probably half a block to the south 10 of the residence, so the residence is on North Street. 11 We were on South Street. Also parking there was 12 Officer Bradley and Officer Lara. 13 Q. Officer Lara was a member of the entry team, 14 correct? 15 A. No, he was on the rear fence with me. 16 Q. Officer Lara was? 17 A. Brett Lara. 18 Q. All right. So had you guys sort of agreed 19 where you would meet before you went to the 20 Wachsmuth's? 21 A. The group I was with. 22 Q. Yes. 23 A. Yes. 24 Q. And you guys assembled, then, in the south of 25 the house. What was the plan. Officer, in terms of how</p>	<p>DAVE BROWN - October 7, 2010 Direct Examination by Mr. Gosman</p> <p>Page 44</p> <p>1 not participating. 2 Q. Okay. All right. And you -- was there a 3 fence that you had to climb over? 4 A. Yes. 5 Q. And so what happened from your perspective? 6 A. Apologize for laughing. But we had a little 7 stool and we were to go over the fence and officer 8 Bradley was the first one over the fence and fell into 9 a pile of bagged aluminum cans. So by the time we 10 wanted to make sure we were secure before we moved 11 forward because, you know, there was noise there. And 12 Brett and I, by the time we got over the fence, they 13 were already entering the residence. We stayed back. 14 Q. Did you have any radio contact with them at 15 all? 16 A. Not once they went in, no. 17 Q. No, before. 18 A. I believe we did. I believe they said they 19 were moving up and that's why we started to go over. 20 Q. Did you have some kind of signaling system 21 where you were going to signal them back that you were 22 in position? 23 A. We would have called them on our radio. 24 Q. Was that something that was preplanned? 25 A. I don't remember.</p>

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1 Q. So -- and this is Officer Bradley that -- I  
2 think you said fell into the aluminum cans?  
3 A. Not fall, he went over the fence and went  
4 into them.  
5 Q. And so did that -- and that caused a delay?  
6 A. Yes, we waited a second then continued to go  
7 over.  
8 Q. I see. From the back of the house, did you  
9 hear the door being breached?  
10 A. I don't remember hearing the door, no.  
11 Q. Do you remember -- you probably didn't hear  
12 the knock-and-announce then?  
13 A. No.  
14 Q. Did you hear the flashbang being deployed?  
15 A. Yes.  
16 Q. In relation -- did you say that the officers  
17 had contacted you by radio and said they were  
18 approaching the front of the house?  
19 A. I believe they did, yes.  
20 Q. Were they supposed to wait for you to get  
21 into position before they knocked on the door, do you  
22 know?  
23 A. We were supposed to get over.  
24 Q. Do you know why they didn't wait for you?  
25 A. Just what I've read in the report.

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1 Q. What is it that you've read in the report?  
2 A. That Tricia Wachsmuth looked out the window  
3 and saw them.  
4 Q. All right. So you got there a little late,  
5 in any event?  
6 A. (Witness nods head.)  
7 Q. And what did you do next then?  
8 A. After everything was secure, somebody opened  
9 the back door and said they were secure. I then left  
10 the area, went back to my vehicle, drove my vehicle  
11 back to the front of the house. And I took the initial  
12 pictures, kind of presearch pictures before they  
13 started searching.  
14 Q. Approximately how much time elapsed from the  
15 detonation of the flashbang until the door was opened  
16 for you to come in?  
17 A. I don't remember. It wasn't a long time.  
18 Q. It wasn't 20 minutes?  
19 A. No.  
20 Q. Was it ten possibly?  
21 A. It wasn't a long time. That was back, what?  
22 A year-and-a-half ago?  
23 Q. You went to your car and got a camera. Was  
24 there another camera there that night?  
25 A. Not that I know of.

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1 Q. And you took some pictures first of the scene  
2 before you began recording the evidence?  
3 A. I took pictures presearch. So before  
4 evidence was collected and everything, I went through  
5 the house and pretty much documented each room.  
6 Q. Okay. What do they call that? Do you know?  
7 I think there's a name for it.  
8 A. I don't. I had the camera and documented it.  
9 Q. Okay. So you took pictures -- did you take  
10 pictures of the bathroom?  
11 A. I'd have to look at the pictures, and I could  
12 tell you which pictures I took.  
13 Q. I think I've got them out in my car. Let me  
14 run out and grab them real quick.  
15 (Recess taken 4:05 to 4:08  
16 p.m., October 7, 2010)  
17 MR. GOSMAN: We will mark this for  
18 identification as 44.  
19 MR. THOMPSON: You're going to mark all the  
20 photos?  
21 MR. GOSMAN: No. Just the group.  
22 (Exhibit 44 identified)  
23 BY MR. GOSMAN:  
24 Q. Officer, go ahead and take a look as far as  
25 you know if that's complete. Because I do not

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1 represent to you that that's a complete set.  
2 A. Sir, I'll tell you now. These pictures look  
3 fairly familiar. And I know I took them, but before I  
4 go on the record and answer, I'd rather look at one of  
5 my disks that has the pictures on it. Just so I can  
6 say who took them, okay?  
7 Q. That's fine.  
8 How do we do that? Do you have a disk handy?  
9 Do you have the disk handy?  
10 A. I could probably go print them real quick.  
11 MR. THOMPSON: It's up to you.  
12 THE WITNESS: It doesn't matter to me.  
13 MR. THOMPSON: I'd represent to you, counsel,  
14 that the photographs that were provided to us by the  
15 Powell Police Department are the photographs that were  
16 produced.  
17 MR. GOSMAN: I don't have any doubt about  
18 that. The problem is I'm not sure I have every one of  
19 them in that group. I'm not trying to pull anything  
20 here. I don't remember if that includes every single  
21 picture.  
22 THE WITNESS: And I didn't take all the  
23 pictures.  
24 BY MR. GOSMAN:  
25 Q. Okay. Who else took pictures?

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1 A. I believe Brett Lara did.  
2 Q. But just one camera?  
3 A. Yes, that I know of.  
4 Q. Okay. You know what? I am just not entirely  
5 sure that's going to be productive for us.  
6 And let's -- let me ask this question: Do  
7 you remember taking a picture of the smoldering pillow  
8 in the bathtub or bathroom?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 MR. THOMPSON: Object.  
12 BY MR. GOSMAN:  
13 Q. Of a pillow in the bathtub? That's fine.  
14 A. I don't -- I took a picture of the bathroom  
15 door. I don't know if that would show the bathtub or  
16 not.  
17 Q. Do you remember the smoke alarm going off in  
18 that house?  
19 A. No.  
20 Q. Do you remember seeing an officer pose for  
21 the camera -- a camera in front of the house after  
22 Tricia Wachsmuth had been removed?  
23 A. What do you mean by "pose"?  
24 Q. Well, Tricia Wachsmuth described an officer  
25 who stood in front of the camera and, you know, made

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1 some kind of a signal with his hands and was posing for  
2 the camera.  
3 A. I did not see that.  
4 Q. Okay. Did you have -- were you in possession  
5 of the camera when you first arrived?  
6 A. Yes.  
7 Q. When did you pass possession -- do you know  
8 if there were any other officers on the scene that had  
9 possession of cameras at that time?  
10 A. I have no idea.  
11 Q. All right. When you were told that the house  
12 was secure, did you -- did you wait at the back door  
13 until you were given that clear signal?  
14 A. We waited in the backyard. We weren't right  
15 up to the door.  
16 Q. Would that have been documented on the CAD  
17 report, that radio contact?  
18 A. I have no idea.  
19 Q. Let's take a look real quick at Exhibit 19.  
20 A. It looks like -- looks like there was one  
21 right here.  
22 Q. Go ahead.  
23 A. It could be -- and I'm just reading what it  
24 says. I don't remember it that night. Powell 9 --  
25 Q. I'm with you. 212610 Powell 9 to Powell 14,

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1 Powell 14, did anyone give you a 10-4 yet? Negative.  
2 We're 10-4?  
3 A. Right.  
4 Q. How do you interpret that?  
5 A. I don't remember. Like I say, that was a  
6 year-and-a-half ago. To me, it's -- everyone's 10-4,  
7 which is okay.  
8 Q. Okay. All right. Now, let's back up here.  
9 I do see that radio traffic at 211645, this is  
10 Powell 6. Are you Powell 6?  
11 A. No, sir.  
12 Q. Who is Powell 6?  
13 A. That would be, I believe, Sergeant Chretien.  
14 Q. And you know what? It's listed on  
15 Exhibit 10, if anything else. Powell 6 is Chretien.  
16 Thank you.  
17 All right. So was that the radio traffic to  
18 you indicating that the -- that the front door team was  
19 in position?  
20 MR. THOMPSON: Objection as to form.  
21 MS. WESTBY: Join.  
22 THE WITNESS: Which one --  
23 BY MR. GOSMAN:  
24 Q. Sorry. Let me withdraw that.  
25 This is the 211645 radio traffic from

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1 Powell 6, "Back door team, we are headed to the front."  
2 I assume that was to you?  
3 A. Yes.  
4 Q. Do you remember that radio transmission?  
5 A. I think I said earlier there was radio  
6 transmission. I don't remember exactly what it said.  
7 Q. It's probably it, wouldn't you agree?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 MR. THOMPSON: Join.  
11 BY MR. GOSMAN:  
12 Q. Wouldn't you agree with that?  
13 MS. WESTBY: Same objection.  
14 MR. THOMPSON: Join.  
15 BY MR. GOSMAN:  
16 Q. You can answer that question.  
17 A. This is what the dispatch typed in. I can't  
18 tell you for sure if that's exactly the words that were  
19 used or not.  
20 Q. Now, it looks like within three seconds,  
21 there is a series of officers who are under the event  
22 portion of the log, it says -- I assume that's arrive,  
23 ARRIV. Do you know what that means?  
24 A. Yes.  
25 Q. What does it mean?

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1 A. Arrive.  
2 Q. And little anticlimactic there. Okay. Thank  
3 you.  
4 How would the dispatcher know when the  
5 officers arrived at the 2116 and 48 seconds?  
6 A. That's going to need a little explanation.  
7 Q. Go ahead.  
8 A. This is what the dispatcher types in.  
9 Q. Right.  
10 A. It doesn't mean that at 211645 Powell 6, back  
11 door team we are headed to the front. That's when she  
12 typed it in. It could have happened at the 211630.  
13 The Powell 2 arrived -- and I mean, again, it all could  
14 have happened at the same time. She's typing it in.  
15 Q. I got you.  
16 So actually what's being recorded here is  
17 when she makes the entry?  
18 A. Yes.  
19 Q. Or I presume perhaps starts the entry. Okay.  
20 In any event, she -- it looks like about  
21 three seconds later she begins typing arrive for a  
22 group of officers?  
23 A. Yes, sir.  
24 Q. Is there anything on that log that tells us  
25 when the officers went through the door?

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1 whoever is in charge, did that.  
2 Q. Okay. All right. Fine. So you asked him  
3 about the stuffed animals, and he stated that his wife  
4 has stuffed animals, and they are cut open but that she  
5 did that when she was a child. What did you understand  
6 about that?  
7 A. Where is that?  
8 Q. The very next paragraph.  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: What she tells me is that her  
12 mom sends her stuff all the time and that she cut this  
13 open. That this happened when she was a child.  
14 BY MR. GOSMAN:  
15 Q. Do you remember anything about that?  
16 A. Just what I said.  
17 Q. Oh. Well, that's -- I thought you were  
18 reading from the document, frankly.  
19 Did you understand that she cut those animals  
20 open as some kind of a therapy that she used in  
21 relation to depression?  
22 MS. WESTBY: Object to the form.  
23 MR. THOMPSON: Join.  
24 THE WITNESS: No.  
25

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 MR. THOMPSON: Join.  
4 THE WITNESS: Yeah, I don't see anything on  
5 here.  
6 BY MR. GOSMAN:  
7 Q. Okay. You prepared a couple of reports in  
8 this case. And by the way, it's about 4:15.  
9 A. We're okay, sir.  
10 (Exhibit 39 identified)  
11 BY MR. GOSMAN:  
12 Q. Okay. All right. Let's go ahead and take a  
13 look at the -- at Exhibit 39, and I think that's right  
14 underneath that page there. Yes.  
15 This was your interview of Bret Wachsmuth,  
16 correct?  
17 A. Yes.  
18 Q. Bret Wachsmuth stated to you that most of the  
19 pills are his and that they are legal. Do you -- were  
20 you able to confirm that? Or if you know?  
21 A. Wachsmuth stated that most pills are his --  
22 most pills are his and that what he has are legal; is  
23 that what you mean?  
24 Q. Yes?  
25 A. No. The other officers, case officer,

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1 BY MR. GOSMAN:  
2 Q. Okay. And then down here, oh, it's about the  
3 fourth or fifth paragraph from the bottom says,  
4 "Wachsmuth informed us that he received a message from  
5 Josh Bessler that said, 'get your shit out of the  
6 house. I'm turning you in for illegal guns, meth,  
7 pipes, and pot.'"  
8 I assume that's you, Officer Brown, asked if  
9 you could see his cell phone. Did you know that the CI  
10 had informed Josh -- sorry -- that the CI had informed  
11 Bret Wachsmuth to get your stuff out of the house I'm  
12 turning you in before you heard it from Bret Wachsmuth?  
13 A. I'm not sure.  
14 Q. Did you -- okay. You asked him if you could  
15 see his cell phone?  
16 A. Yes.  
17 Q. And did you see the cell phone?  
18 A. Yes.  
19 Q. Were you able to confirm at all whether or  
20 not that call was from Josh Bessler?  
21 MR. THOMPSON: Objection as to form.  
22 MS. WESTBY: Join.  
23 THE WITNESS: No, I wasn't.  
24 BY MR. GOSMAN:  
25 Q. "I looked and found at 1:42 p.m. on 2/24

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1 there was a call." Did you look at the phone and  
2 record that time?  
3 A. No, I didn't.  
4 Q. How does that end up in your report: "I  
5 looked at it and found at 1:42 p.m. on 2/24/09 there  
6 was a call"?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 MR. GOSMAN: Okay.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: It was a restricted number. I  
12 noticed on the phone, a restricted number at 1:42 p.m.  
13 on 2/24/09.  
14 BY MR. GOSMAN:  
15 Q. So you saw the time for that restricted call?  
16 A. Yes.  
17 Q. You asked him why he had guns lying around  
18 the house and he stated that he was afraid of Josh  
19 Bessler?  
20 A. Yes.  
21 Q. Okay. I think that's it for that.  
22 You also interviewed Tricia Wachsmuth?  
23 A. Yes.  
24 Q. And you heard her in her deposition -- I  
25 recollect that you were there -- when she testified

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1 that after she told you that she wanted to see a lawyer  
2 that you stood up and slammed your hands on the table  
3 and said, "You will tell us where Bret Wachsmuth was."  
4 Now, I am not pretending to quote you  
5 directly. But did you, in fact, say words to that  
6 effect to Tricia Wachsmuth after she indicated she  
7 wanted to see a lawyer?  
8 A. She never asked for a lawyer. She only asked  
9 to see her husband. She was only in my office for a  
10 couple minutes. She went back into the booking area  
11 and was put in there. I never slammed my hands. I  
12 never did any of that of what she said.  
13 Q. Okay. Do you have an official e-mail address  
14 at the City of Powell?  
15 A. Dbrown@cityofpowell.com.  
16 Q. D. Brown?  
17 A. D, first initial, last name  
18 @cityofpowell.com.  
19 Q. Have you communicated with officers about  
20 this case prior to the filing of this lawsuit?  
21 A. Not on e-mail, no.  
22 MR. GOSMAN: I don't think I have any further  
23 questions. Thank you very much.  
24 (Recess taken 4:23 to 4:26  
25 p.m., October 7, 2010)

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1 BY MR. GOSMAN:  
2 Q. There was one other question that I wanted to  
3 ask, and that is: Do you remember taking a photograph  
4 of a small baggie or bag, cellophane package, that  
5 appeared to contain cocaine or methamphetamine residue?  
6 A. I would have to look at the pictures. If --  
7 and it needs explanation.  
8 Q. Go ahead.  
9 A. If it was sitting out in the open and I took  
10 the picture of the room for the presearch, okay,  
11 then -- and if it's in that picture, yes, I did but I  
12 didn't know what this was. Anything that was found  
13 where there is close-ups, I did not take that picture.  
14 Q. Okay. I can tell you that Officer Miner  
15 indicated he found it under the bed, so I assume he  
16 retrieved it and then brought it to the attention of  
17 the officers that took the photograph?  
18 A. I was gone at that time.  
19 Q. You were gone at that time?  
20 A. Yes.  
21 Q. Oh, I see. So you just took the photos of  
22 the -- sort of the civil damage photos of the house  
23 before the search started?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 MR. THOMPSON: Objection.  
2 BY MR. GOSMAN:  
3 Q. I'm calling it something I just made up.  
4 Sorry about that.  
5 A. I took the pictures of the presearch.  
6 Q. Okay.  
7 A. Okay. And then I went down and interviewed  
8 them at the law enforcement center while everyone else  
9 did the search. I did not search.  
10 MR. GOSMAN: Thank you. You're free to go.  
11 Appreciate it.  
12 (Proceedings concluded at 4:28  
13 p.m., October 7, 2010.)  
14  
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24  
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1 DEPONENT'S CERTIFICATE

2 I, DAVE BROWN, do hereby certify, under  
3 penalty of perjury, that I have read the foregoing  
4 transcript of my testimony consisting of 60 pages,  
5 taken on October 7, 2010 and that the same is, with any  
6 changes noted below, a full, true and correct record of  
7 my deposition.

8	PAGE	LINE	CORRECTION	REASON FOR CORRECTION
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DAVE BROWN Date

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1 CERTIFICATE

2 I, VONNI R. BRAY, Registered Professional  
3 Reporter, and Notary Public for the State of Montana,  
4 do hereby certify that DAVE BROWN was by me first duly  
5 sworn to testify to the truth, the whole truth, and  
6 nothing but the truth;

7 That the foregoing transcript, consisting of  
8 61 pages, is a true record of the testimony given by  
9 said deponent, together with all other proceedings  
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this 16th day of October, 2010.

13

14

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18

19

20

21

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25

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		<b>Valley (3)</b>		

# Appendix Fourteen

**In The Matter Of:**  
*Tricia Wachsmuth v.*  
*City of Powell, et al.*

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*Kirk Chapman*  
*November 23, 2010*

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING  
3 -----  
4 TRICIA WACHSMUTH, )  
5 Plaintiff, )  
6 vs. ) NO. 10-CV-041J  
7 )  
8 CITY OF POWELL, AND IN THEIR )  
9 INDIVIDUAL CAPACITY, TIM )  
10 FEATHERS, CHAD MINER, MIKE )  
11 CHRETIEN, ROY ECKERDT, DAVE )  
12 BROWN, MIKE HALL, BRETT LARA, )  
13 MATT MCCASLIN, ALAN KENT, MATT )  
14 DANZER, OFFICER BRILAKIS, LEE )  
15 BLACKMORE, CODY BRADLEY, KIRK )  
16 CHAPMAN, JOHN DOES #1-#4, )  
17 Defendants. )  
18  
19 DEPOSITION OF KIRK CHAPMAN  
20 1:23 p.m., Tuesday, November 23, 2010  
21  
22 Pursuant to notice, the deposition of KIRK  
23 CHAPMAN was taken in behalf of Plaintiff in accordance  
24 with the applicable Federal Rules of Civil Procedure at  
25 270 North Clark, Powell, Wyoming, before Vonni R. Bray,  
Registered Professional Reporter and Notary Public of  
the State of Montana.

KIRK CHAPMAN - November 23, 2010 Page 2

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Also Present: Tim Feathers

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25

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Direct Examination by Mr. Gosman

1 KIRK CHAPMAN,  
2 having been first duly sworn, testified as follows:  
3 DIRECT EXAMINATION  
4 BY MR. GOSMAN:  
5 Q. Officer, have you given a deposition before?  
6 A. No.  
7 Q. I'm going to go ahead and review a couple of  
8 the ground rules for taking depositions with you before  
9 we start.  
10 Your testimony, as you understand, is taken  
11 under oath. And, of course, you're required to answer  
12 the questions truthfully. And you will answer each of  
13 the questions that I ask you today unless your  
14 attorneys direct you otherwise.  
15 A. (Witness nods head.)  
16 Q. Let's see. It is important that you ask for  
17 clarification if you do not understand one of my  
18 questions. Would you agree to do that?  
19 A. Yes.  
20 Q. And we're free to take a break at any time  
21 today, but we do not take a break during the pendency  
22 of a question. So we'll need to wait until the  
23 question that has been asked has been answered before  
24 we can go ahead and take a break, okay?  
25 A. Okay.

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1 Q. And if you want to take a break, just let us  
2 know. What is your full name, sir?  
3 A. Brian Chapman.  
4 Q. And what is your address? You can use your  
5 P.E. address if you like.  
6 A. 250 North Clark, Powell, Wyoming 82435.  
7 Q. Are you currently on any medications that  
8 would impair your judgment today?  
9 A. No.  
10 Q. You're tired?  
11 A. Yes.  
12 Q. Do you think you're going to be able to  
13 remember the events as well as you could in any setting  
14 here this afternoon?  
15 A. Yes.  
16 Q. All right. Have you ever been arrested for a  
17 crime that was classified as a felony?  
18 A. No.  
19 Q. Have you ever been accused of a crime  
20 involving dishonesty?  
21 A. No.  
22 Q. Have you ever had a restraining order placed  
23 against you?  
24 A. No.  
25 Q. Have you ever been a party to a lawsuit?

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1 A. No.  
2 Q. Could you describe your educational  
3 background, starting with high school?  
4 A. Graduated high school in Powell here.  
5 Q. What year?  
6 A. 1992.  
7 Q. And what did you do after you got out of high  
8 school?  
9 A. Went into the service  
10 Q. How long were you in the service?  
11 A. Ten years.  
12 Q. Which branch?  
13 A. Marine Corps.  
14 Q. And were you -- how were you discharged?  
15 A. Honorably.  
16 Q. And did you receive training in law  
17 enforcement in the Marine Corps?  
18 A. In law enforcement?  
19 Q. Yes.  
20 A. In some law enforcement capacities.  
21 Q. All right. When did you join the Powell  
22 Police Department?  
23 A. In 2007, January 15.  
24 Q. And what did you do from the time you got out  
25 of the service until you joined the Powell Police

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1 Department?  
2 A. Well, I was in school from '98 to 2004 -- or  
3 2003, where I went to a couple of different schools.  
4 Q. And did you obtain a degree?  
5 A. Yes.  
6 Q. In what area is your degree?  
7 A. Criminal justice.  
8 Q. And do you have -- do you hold a bachelor  
9 degree in criminal justice?  
10 A. It's an associate's degree.  
11 Q. And so then after you graduated with that  
12 degree, what did you do?  
13 A. Worked different jobs. And I was a  
14 corrections officer in Outagamie County, Wisconsin.  
15 Q. How long did you do that?  
16 A. Was there for approximately four months.  
17 Q. And why did you leave?  
18 A. I was offered a position with the Neenah  
19 Police Department.  
20 Q. How long were you there?  
21 A. I was there for approximately four months.  
22 Q. And why did you leave?  
23 A. I resigned due to personal issues within the  
24 department.  
25 Q. Did they involve any claims against you?

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1 A. No.  
2 Q. Was it just a matter of not getting along  
3 with somebody?  
4 A. Yes.  
5 Q. Were charges -- were any -- was any official  
6 action taken in connection with your leaving?  
7 A. No.  
8 Q. You went to work for the Powell Police  
9 Department after that job?  
10 A. I worked security at a high school in  
11 Appleton, Wisconsin, for a couple of years.  
12 Q. And then you came to Wyoming?  
13 A. Yes.  
14 Q. All right. Was the Powell Police Department  
15 aware of the circumstances surrounding your leaving the  
16 Neenah Police Department?  
17 A. I'm sorry?  
18 Q. Was the Powell Police Department aware of the  
19 circumstances of your leaving the Neenah Police  
20 Department?  
21 A. Yes.  
22 Q. Prior to your coming to work for the Powell  
23 Police Department, did you have any SWAT training?  
24 A. Yes.  
25 Q. Where?

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1 A. In the military.  
2 Q. In the military.  
3 And how long ago was that? What year?  
4 A. The last training that I did?  
5 Q. Yes.  
6 A. That would have been 2000.  
7 Q. What kind of training did you have?  
8 A. Oh, everything from room clearing, dynamic  
9 entries to breaching.  
10 Q. And were you involved in a SWAT team there  
11 with the Air Force?  
12 A. I wasn't with the Air Force.  
13 Q. I'm sorry, I just made that up.  
14 What branch -- I'm sorry, Marine Corps.  
15 Were you involved with any military -- or a  
16 SWAT team -- I'm sorry, were you involved with a SWAT  
17 team with the Marine Corps?  
18 A. Marine Corps doesn't have a SWAT team.  
19 Q. Do they have anything like a SWAT team?  
20 A. They have quite a few different teams.  
21 Q. Do they have any teams that are like SWAT  
22 teams that are associated with internal policing?  
23 A. Internal policing?  
24 Q. Yeah.  
25 A. I didn't have any SWAT training as far as

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1 internal.  
2 Q. What was your SWAT training for?  
3 A. Antiterrorism.  
4 Q. All right. And did you ever serve on an  
5 antiterrorism SWAT team?  
6 A. Yes.  
7 Q. For how long?  
8 A. I was an antiterrorism force protection  
9 instructor for three years.  
10 Q. Okay. And did you obtain any certifications?  
11 A. They send you to classes. They don't  
12 necessarily give you certifications.  
13 Q. Were you a certified instructor?  
14 A. I was a certified instructor, yes.  
15 Q. All right. Did you have a certificate?  
16 A. In antiterrorism force protection, yes.  
17 Q. Have you maintained any training in that  
18 field since you left the military?  
19 A. In antiterrorism force protection?  
20 Q. Or SWAT-type training.  
21 A. Nothing certified.  
22 (Exhibit 31 identified)  
23 BY MR. THOMPSON:  
24 Q. All right. Let's go ahead and take a look at  
25 Exhibit 31. And this is a group of POST training

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1 records. You're in here somewhere. Let's see if we  
2 can find it.  
3 BY MR. GOSMAN:  
4 Q. I may not have your POST records here. Oh,  
5 well...  
6 Okay. We're going to get back to this.  
7 We'll come back to this later.  
8 Let me ask you this question: Did you  
9 participate in the Patrol Tactical Response Course in  
10 September or October of 2005?  
11 No, you were not with the Powell Police  
12 Department then, were you?  
13 A. No, I wasn't.  
14 Q. You came in 2007?  
15 A. Yes.  
16 Q. All right. Have you had any training as a  
17 Powell police officer in dynamic entry tactics?  
18 A. We have gone over -- as far as FTO training  
19 and stuff like that, we've touched on dynamic entries.  
20 Q. All right.  
21 A. And room clearing procedures.  
22 Q. Do you have any POST-certified training?  
23 A. No.  
24 Q. And when you say -- did you say -- that was  
25 FTO, did you say?

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1 A. Yes.  
2 Q. And why don't you explain the FTO program.  
3 A. The FTO program, the Field Training Officer  
4 program is where you're paired with other officers  
5 within the department where they have -- they have been  
6 selected as having the correct mindset and training to  
7 train new officers in the field of law enforcement,  
8 where you ride along with them and they train you as  
9 far as everything from simple traffic stops to room  
10 clearing procedures, open doors, burglary alarms,  
11 responses.  
12 Q. And the field training program is described  
13 in the policy and procedures manual of the City of  
14 Powell, correct?  
15 A. It is described.  
16 Q. And is it your testimony that the dynamic  
17 entry tactics that you've been trained on or have  
18 received training concerning since you arrived at the  
19 Powell Police Department were in connection with the  
20 field training program?  
21 A. We did touch on it when we were -- when I was  
22 on FTO, as far as dynamic entry and room clearing  
23 procedures.  
24 Q. Were you the instructor?  
25 A. No.

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1 Q. Were you one of the officers that was being  
2 trained?  
3 A. Yes.  
4 Q. And that was during your probationary term?  
5 A. Correct.  
6 Q. Who was your trainer?  
7 A. I've had three trainers. Officer Schmidt,  
8 Officer Lara, and I believe it was Sergeant Eckerdt.  
9 Kind of going back and forth between Sergeant Eckerdt  
10 and Sergeant Kent.  
11 Q. And do you remember specifically if all of  
12 the officers you just mentioned, Lara -- was it  
13 Schmidt?  
14 A. Yes.  
15 Q. -- Kent, and Eckerdt were involved in dynamic  
16 entry tactics?  
17 A. I believe it was Officer Schmidt was the main  
18 one. He's the firearms instructor as well.  
19 Q. All right. Was anyone else present?  
20 A. Not to my knowledge.  
21 Q. And since that time, have you had any dynamic  
22 entry specific training?  
23 A. Yes.  
24 Q. Where?  
25 A. Last November we had training with Doug

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1 Pechtel.  
2 Q. So he came back to the Cody area with --  
3 from -- the man from Countermeasures Tactical Institute  
4 and put on another program for the officers here?  
5 A. Yes.  
6 Q. Do you remember what it was called?  
7 A. It was Active Shooter Response by Patrol.  
8 Something like that.  
9 Q. All right. And prior to that time, this  
10 would be November of 2009? Was it November of 2009?  
11 Let me make sure --  
12 A. Yes, I believe it was 2009.  
13 Q. Prior to November of 2009 and after you  
14 completed your field training program, had you had any  
15 training specific to dynamic entry with the Powell  
16 Police Department?  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 MR. THOMPSON: Join.  
20 MS. WESTBY: And go ahead and answer.  
21 BY MR. GOSMAN:  
22 Q. Yes, please.  
23 A. Could you ask it again?  
24 Q. Yeah. Prior to November of 2009 and  
25 following your field training in the area of -- or that

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1 touched upon dynamic entry, have you had any additional  
2 training specific to dynamic entry?  
3 MS. WESTBY: Object to form.  
4 Go ahead.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: Prior to 2009? I'm not for  
7 certain.  
8 BY MR. GOSMAN:  
9 Q. Have you ever participated with the Powell  
10 Police Department as a team in training exercises  
11 specific to dynamic entry?  
12 A. Yes.  
13 Q. When and where?  
14 A. We've done active shooter drills within the  
15 schools, other buildings. Mainly the school buildings,  
16 I believe, when they are unoccupied.  
17 Q. Unoccupied? When did those events occur?  
18 A. I'm not for sure. They kind of go, you know,  
19 couple of times a year.  
20 Q. Okay. Do you remember participating in any  
21 of that training prior to February 24th, 2009?  
22 A. Yes.  
23 Q. Do you know if that training is documented?  
24 A. I'm not sure.  
25 Q. Was it a joint agency training?

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1 A. No.  
2 Q. Is it part -- does the Powell Police  
3 Department have a P.I.E.R. team?  
4 A. Explain.  
5 Q. Do you know what P.I.E.R. is?  
6 A. No.  
7 Q. Okay. Patrol Interdiction Emergency Response  
8 team?  
9 A. We don't, no.  
10 Q. All right. The times that you trained with  
11 the Powell Police Department in room clearing at the  
12 schools, who was there?  
13 And you don't have to remember every name,  
14 but let me say this: Was it most of the Powell Police  
15 Department?  
16 A. Yes.  
17 Q. All right. And who was the instructor?  
18 A. I'm thinking Kevin -- Officer Schmidt was one  
19 of the primary instructors.  
20 Q. Do you know if he's certified in any of the  
21 areas that are pertinent to dynamic entry?  
22 A. I'm not sure what his certifications -- all  
23 certifications are.  
24 Q. And this was in the context of school  
25 emergency situations?

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1 A. Immediate action.  
2 Q. Immediate action.  
3 And, of course, that does involve room  
4 clearing tactics. But have you been involved in any  
5 specific training as a team where you were simulating a  
6 warrant service or a dynamic entry into a premises?  
7 A. Where we've done dynamic entries? Yes.  
8 Q. Okay. When and where?  
9 A. I'm not exactly sure. We trained on all the  
10 equipment when we got new breaching tools and  
11 everything. We all sat down and went over the door  
12 breachers and stuff like that.  
13 Q. Mechanical devices that are involved in  
14 breaching?  
15 A. Correct.  
16 Q. What kind of mechanical devices do you have?  
17 A. Well, we have a door ram. At that time we  
18 had a door ram and a window rake.  
19 Q. Okay. And you had the whole police  
20 department come in and sit down and go over those uses  
21 of the --  
22 A. I believe at that time those were just done  
23 at a squad level.  
24 Q. Okay. Is any of that documented, do you  
25 know?

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1 A. Not that I'm aware of. I'm not sure.  
2 Q. All right. Have you ever used one of those  
3 rakes since you were out of the Marine Corps?  
4 A. Since I was out?  
5 Q. Yes.  
6 A. No.  
7 Q. Have you ever employed a battering ram?  
8 A. Yes.  
9 Q. When and where?  
10 A. Prior to getting out of the service?  
11 Q. No, after you got out of the service.  
12 A. Deployed the door ram on a couple of  
13 misdemeanor warrants.  
14 Q. Where?  
15 A. One was on North Atsaroka. The other one,  
16 I'm not sure. Prior to 2009?  
17 Q. Yeah.  
18 A. Yes.  
19 Q. Was there a team involved in that?  
20 A. There was a team of officers.  
21 Q. Okay. Well, I'll tell you what, I've got a  
22 document here that should have a reference to that. We  
23 haven't marked this yet, but we'll just go ahead and do  
24 that right now. We'll mark it as Exhibit 59. And we  
25 don't have to mark it right now.

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1 (Exhibit 59 identified)  
2 BY MR. GOSMAN:  
3 Q. But I want you to take a look at the incident  
4 reports that are behind the group of pages there at the  
5 front and tell me which ones you were involved in,  
6 whether it was a battering ram and dynamic entry  
7 misdemeanor warrants.  
8 And I think you can -- frankly, if you could  
9 just go to the first page of each one of those  
10 incidents, and I think you get a pretty good picture  
11 from that first page what it's about. And you can tell  
12 which ones are yours, so you don't have to go through  
13 the whole sheaf of documents.  
14 While you're going through those, if you can,  
15 can you tell me why you used a battering ram to serve a  
16 misdemeanor warrant?  
17 A. Because there was circumstances where  
18 evidence may be lost.  
19 Q. All right. What evidence was it that you  
20 were looking for?  
21 A. We were looking for alcohol and underage  
22 drinking on one of them.  
23 Q. So you went to a party with underage drinking  
24 and used a battering ram to gain entrance into the  
25 house?

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1 A. Yes.  
2 Q. Was this after February of 2009?  
3 A. I'm not exactly sure what the date was on  
4 that one. I believe it was prior to 2009.  
5 Q. Had the kids barricaded the door or  
6 something?  
7 A. Yes.  
8 Q. So they wouldn't open it.  
9 MS. WESTBY: And just for clarification, when  
10 you're answering these questions about other incidents,  
11 don't provide any names.  
12 THE WITNESS: Okay.  
13 BY MR. GOSMAN:  
14 Q. Did you get a search warrant?  
15 A. Yes.  
16 Q. And so they had been -- had you gone to the  
17 door and knocked on it before you got the search  
18 warrant?  
19 A. Yes.  
20 Q. And they wouldn't open the door?  
21 A. Correct.  
22 Q. Okay. Let's go ahead. Tell me about the  
23 second one.  
24 A. I'm not exactly sure what the second one was.  
25 Q. Is it possible there may not have been a

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1 second one?  
2 A. No, 'cause I'm fairly clear that I did use  
3 the battering ram on two occasions.  
4 Q. Okay. Well, they should -- were they both  
5 after November -- or February of 2009?  
6 A. I'm not sure when the second one was.  
7 Q. All right.  
8 A. The second one might have been.  
9 Q. After February of 2009?  
10 A. Yes.  
11 Q. The underage drinking thing, you think, was  
12 before?  
13 A. Yes.  
14 Q. Who was with you that night?  
15 A. Sergeant Chretien was there. I believe  
16 Officer Lara was there as well.  
17 Q. All right. So there were three of you,  
18 correct?  
19 A. Yes.  
20 Q. That's not quite the team that was assembled  
21 for the Wachsmuth warrants service, though.  
22 MS. WESTBY: Object to the form of the  
23 question.  
24 MR. THOMPSON: Join.  
25

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1 BY MR. GOSMAN:  
2 Q. And did you have your extra protection gear  
3 on to serve the warrant on the underage drinking party?  
4 A. No.  
5 Q. Did you have long rifles?  
6 A. I didn't.  
7 Q. Did anyone else?  
8 A. I'm not sure.  
9 Q. Was a flashbang deployed?  
10 A. I believe no.  
11 Q. Did you perform room clearing operations when  
12 you went into the house?  
13 A. Yes.  
14 Q. Did you have your weapon drawn?  
15 A. Yes.  
16 Q. Did you meet any resistance?  
17 A. Just kids hiding at that point.  
18 Q. Okay.  
19 A. No resistance.  
20 Q. Again, I think there are incident sheets at  
21 the first -- on the first page of each one of these  
22 reports.  
23 A. I am, but I'm not seeing mine here, so...  
24 Q. Okay. It looks like you're only about  
25 halfway through.

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1 A. Are they in --  
2 Q. Order? I can't say that they are.  
3 A. -- order of date?  
4 Q. Tell you what, let's save this project for a  
5 break if we take one, and we'll let you finish looking  
6 through those to see if you can find reference to  
7 either one of those misdemeanor warrants that involve  
8 door breaches.  
9 A. Okay.  
10 Q. All right. Thank you.  
11 Have you ever performed as a team with the  
12 Powell Police Department in an operational setting  
13 where you had, in fact, an entry team with long rifles,  
14 extra body armor, and the deployment of a flashbang  
15 device, along with a battering ram?  
16 MR. THOMPSON: Objection.  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 MR. THOMPSON: Join.  
20 BY MR. GOSMAN:  
21 Q. Other than the Wachsmuth warrant service?  
22 MR. THOMPSON: Same objection.  
23 THE WITNESS: I believe in 2007, we did have  
24 an incident where a guy was barricaded with a handgun  
25 and possible other weapons.

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1 BY MR. GOSMAN:  
2 Q. Okay. Okay. And did you go into the home?  
3 A. I did not.  
4 Q. Did -- I assume -- did anyone go into the  
5 home or was the man called out of the house?  
6 A. The individual ended up coming out.  
7 Q. Was he called out?  
8 A. No.  
9 Q. Do you know why he came out? Had his wife  
10 called him?  
11 A. No, I believe he came out to smoke a  
12 cigarette and tried to flee in his car.  
13 Q. That was the guy that got shot?  
14 A. Yes.  
15 Q. All right. By the way, how -- whatever  
16 became of him?  
17 A. He's still here.  
18 Q. Still alive? All right.  
19 All right. And that incident is documented  
20 in the paperwork that's been provided to me, so we'll  
21 leave that at that.  
22 Anything else -- now, by the way, there was  
23 no dynamic entry at that time, correct?  
24 A. Correct.  
25 Q. And so we didn't use a battering ram and we

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1 didn't use a flashbang device?  
2 A. Correct.  
3 Q. You had officers who secured a perimeter;  
4 isn't that really what happened that night?  
5 A. Correct.  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 MR. THOMPSON: Join.  
9 BY MR. GOSMAN:  
10 Q. All right. So I'm referring to specific  
11 situations involving dynamic entry with a team that  
12 included long rifles, battering ram, diversionary  
13 device and -- well, that's about it.  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 MR. THOMPSON: Join.  
17 THE WITNESS: I don't recall any other  
18 situations at this time.  
19 BY MR. GOSMAN:  
20 Q. Okay. And when you say you've trained with  
21 the other Powell police officers on some of the  
22 elements of dynamic entry -- and you've gone to the  
23 school and practiced immediate action response to an  
24 emergency school situation, correct?  
25 A. Correct.

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1 Q. Have you ever met and actually practiced as a  
2 team in the performance of SWAT-type entries other than  
3 in the settings that you've described to me?  
4 MS. WESTBY: Object to the form of the  
5 question.  
6 MR. THOMPSON: Join.  
7 THE WITNESS: Have we ever met as a team?  
8 BY MR. GOSMAN:  
9 Q. Have you ever gathered as a team and actually  
10 been assigned roles and functioned as a team from  
11 beginning to end in a planned type of setting?  
12 A. Yes. And the dates escape me, but the last  
13 one, major one that we did was up at the new high  
14 school prior to it --  
15 Q. When was that?  
16 A. The dates -- it's been a couple years, I  
17 believe, when we had --  
18 Q. Is this one of those school actions that  
19 we've talked about?  
20 A. Yes.  
21 Q. All right. We don't want to talk about  
22 something twice if we don't have to, so -- although  
23 I'll do it more than once. And I'll forgive you for  
24 doing it too.  
25 But, I mean, have there been any other

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1 situations where you have functioned as a team, other  
2 than going up to the high school and practicing  
3 emergency --  
4 A. As far as practicing?  
5 Q. Yes.  
6 A. We practiced dynamic entries multiple times.  
7 Q. Where and when?  
8 A. Well, couple of years ago, the major one up  
9 at the high school where we had EMS.  
10 Q. Right.  
11 A. And we've had other ones at old Southside  
12 school, been over there three times, I believe.  
13 Q. Okay. Now, we already talked about these?  
14 I'm not interested in the school settings.  
15 A. Well, these are the ones that we practiced a  
16 lot of our training on.  
17 Q. Okay.  
18 A. And where we have access to these buildings  
19 when they are not occupied.  
20 Q. All right. And do you know what was behind  
21 those training events? Was it in response to some kind  
22 of a statewide effort to react to, you know, school  
23 shootings or something like that?  
24 A. What was behind it?  
25 Q. Yes.

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1 A. To be trained and be able to respond to a  
2 situation if anything ever happened.  
3 Q. Okay. All right. Who were your trainers in  
4 these school settings?  
5 A. Well, we've had Sergeant Eckerdt, had  
6 Sergeant Chretien, had Officer Schmidt. I think those  
7 are the three main instructors in those areas at that  
8 time.  
9 Q. All right. Where were you on the night of  
10 the 24th of February when you first learned that there  
11 was going to be warrant service on the Wachsmuth  
12 residence?  
13 A. Wrestling practice.  
14 Q. Do you teach -- coach wrestling?  
15 A. Yes.  
16 Q. And you were off duty, then?  
17 A. Yes.  
18 Q. And do you remember what time it was?  
19 A. Approximately -- it was in the evening.  
20 Q. Well, what time was your wrestling practice?  
21 A. I believe the wrestling for the younger kids  
22 was 6:00 to 7:00 that night. So it would have been  
23 probably a little after 7:00 -- or actually, I might  
24 have received the call prior to 7:00.  
25 Q. Okay. Who called you?

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1 A. Dispatch.  
2 Q. And was it Marissa Torczon?  
3 A. I don't recall.  
4 Q. How long did it take you to get down to the  
5 police station?  
6 A. After I left wrestling practice.  
7 Q. Did you complete wrestling practice or did  
8 you just leave right then?  
9 A. No. They called back a second time and asked  
10 me to come in.  
11 Q. Okay. So what happened the first time?  
12 A. The first time was just I was made aware of  
13 the situation that there was a warrant getting signed  
14 and that they would call when the warrant was signed  
15 and were ready to meet.  
16 Q. So at the time that you first heard about  
17 this, the warrant hadn't even been signed?  
18 A. At this time, I'm not exactly sure.  
19 Q. But anyway, you had a call from somebody who  
20 said the warrant was being signed and that you'd be  
21 called back?  
22 A. Yes.  
23 Q. All right. And did you understand that other  
24 members of the Powell Police Department were going to  
25 be involved in this warrant service at that time?

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1 A. Yes.  
2 Q. What did you -- who did you speak to?  
3 A. I'm not exactly sure.  
4 Q. What did you talk about?  
5 A. How their day was going.  
6 Q. Was there any discussion about the warrant  
7 service?  
8 A. When I first arrived, no.  
9 Q. When did you first hear about the warrant  
10 service?  
11 A. When we were downstairs in the classroom.  
12 Q. And was the entire team assembled at that  
13 point?  
14 A. At that time, we were prepping.  
15 Q. Yes. Okay. Was the team there?  
16 A. Most everybody was there.  
17 Q. What do you mean by prepping?  
18 A. We were going over the layout, the situation,  
19 the information that we had at the time. Then we were  
20 talking about how we would approach, how we'd execute  
21 the search warrant, countermeasures to that if certain  
22 things weren't done.  
23 Q. Well, let's just stop there.  
24 Countermeasures, what kind of countermeasures did you  
25 discuss?

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1 A. I was assuming.  
2 Q. Okay. And the second call occurred about how  
3 much later?  
4 A. Probably within 15, 20 minutes.  
5 Q. Okay. Was that after 7:00, then?  
6 A. I believe so.  
7 Q. And did you go immediately to the police  
8 station?  
9 A. I went home, where I then changed over, and  
10 then responded back to the police department.  
11 Q. Okay. And did you arrive around 7:30?  
12 MS. WESTBY: Object --  
13 THE WITNESS: I'm not sure --  
14 MS. WESTBY: -- to the form of the question.  
15 Go ahead.  
16 BY MR. GOSMAN:  
17 Q. You're not sure?  
18 A. Not exactly sure what my arrival time was.  
19 Q. When you arrived, who was there?  
20 A. Officer Miner, Sergeant Chretien,  
21 Sergeant Kent, Officer Hall, Officer McCaslin.  
22 Q. Did others arrive after you arrived?  
23 A. I believe so.  
24 Q. And did you speak to any of these officers  
25 when you first arrived?

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1 A. Well, we talked about all the incidents on  
2 the information that we had at the time.  
3 Q. And what was that information?  
4 A. We had information that the individuals in  
5 the house were paranoid, window peekers, extremely  
6 emotional, up and down as far as their emotions, and  
7 that there were loaded weapons in the house, drugs.  
8 Information that drugs were being sent through the  
9 mail.  
10 Q. Is that it, as best you remember?  
11 A. As best as I remember.  
12 Q. All right. Did you discuss whether or not it  
13 was appropriate to ask Bret Wachsmuth's father, Tom  
14 Wachsmuth, to participate in any way in calling his son  
15 out of the house?  
16 A. I believe it was mentioned.  
17 Q. Okay. What was mentioned?  
18 A. If we should contact Tom Wachsmuth.  
19 Q. Was it sort of a vote, or what was the deal?  
20 A. It wasn't a vote.  
21 Q. Okay. How was it discussed and how did it  
22 end up?  
23 A. I believe an officer had mentioned, you know,  
24 if Tom Wachsmuth was informed about this, and he  
25 wasn't, and the reasons why he wasn't.

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1 Q. Okay. So one of the officers raised the  
2 question about why Tom Wachsmuth hadn't been notified?  
3 A. Correct.  
4 Q. Do you know which officer that was?  
5 A. No.  
6 Q. Do you know which officer responded?  
7 A. No, I don't.  
8 Q. Was there any other discussion in your  
9 presence about Bret Wachsmuth?  
10 A. I'm sorry?  
11 Q. Was there any other discussion in your  
12 presence about Bret Wachsmuth, and I'm referring  
13 specifically to further information regarding his  
14 depression or his -- or something that would have added  
15 information about what was taking place that night?  
16 A. About his erratic behavior, and how he's  
17 paranoid, carries a loaded handgun with him.  
18 Q. Carries a loaded handgun with him?  
19 A. (Witness nods head.)  
20 Q. When -- I'm sorry, when he's alone?  
21 A. When he's at home.  
22 Q. You heard that he carried a loaded handgun  
23 with him when he was at home?  
24 A. Yes.  
25 Q. Who told you that?

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1 A. That was the information we had from the CI.  
2 Q. From the CI. You didn't talk to the CI,  
3 though, correct?  
4 A. Correct.  
5 Q. Well, as a matter of fact, the only  
6 person that apparently talked -- well, actually,  
7 Jonathan Davis talked to him. And Lt. Patterson talked  
8 to him. Did you know that, L... Patterson from the Park  
9 County Sheriff's Office?  
10 A. I believe it was mentioned at that time, yes.  
11 Q. Okay. Other than that, Chad Miner was the  
12 only person who communicated with the CI, correct?  
13 A. At that time, yes.  
14 Q. At that time. Did somebody else communicate  
15 with him later?  
16 A. I'm not exactly sure who communicated with  
17 him.  
18 Q. All right. In any event, that would be  
19 pretty important information, if someone were carrying  
20 a gun around with them in the house; would you agree  
21 with that?  
22 A. Yes.  
23 Q. And you would certainly expect that to show  
24 up in one of the reports or somewhere if that  
25 information had, in fact, been conveyed by a

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1 confidential informant?  
2 MR. THOMPSON: Objection as to the form.  
3 MS. WESTBY: Join.  
4 BY MR. GOSMAN:  
5 Q. You can answer that question, sir.  
6 THE WITNESS: What was the question?  
7 BY MR. GOSMAN:  
8 Q. That would certainly be information you would  
9 expect to see in the documentation of the  
10 communications with the confidential informant?  
11 MR. THOMPSON: Objection as to form.  
12 MS. WESTBY: Join.  
13 THE WITNESS: Is that a statement?  
14 BY MR. GOSMAN:  
15 Q. Yes, it's a question.  
16 A. It's a question, okay. I would think that  
17 that was imperative information.  
18 Q. Do you remember hearing anything else?  
19 This is contributions from the other officers  
20 there at the police department.  
21 A. Well, we went over everything that the CI had  
22 related to Officer Miner and talked about basically the  
23 urgency in it and in officer safety.  
24 Q. Okay. What was the urgency?  
25 A. The urgency was that there was a lot of drugs

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1 coming in and out of that house and that there was  
2 drugs being sent through the mail, and that these  
3 people are unstable.  
4 Q. Do you know how long Officer Miner had known  
5 the confidential informant?  
6 A. No.  
7 Q. Do you know how reliable the confidential  
8 informant was?  
9 A. No.  
10 Q. Have you ever met the confidential informant?  
11 A. No.  
12 Q. You haven't had any dealings with him  
13 professionally?  
14 A. I'm not sure.  
15 Q. All right. Okay. So -- and we've already  
16 talked about the officer safety issues, correct?  
17 A. Correct.  
18 Q. Is there anything we haven't talked about in  
19 connection with the officer safety issues that was  
20 discussed that evening?  
21 MS. WESTBY: Object to the form of the  
22 question.  
23 MR. THOMPSON: Join.  
24 THE WITNESS: No.  
25

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1 BY MR. GOSMAN:  
2 Q. All right. So how long did the meeting take?  
3 A. Not exactly sure how long we were down there.  
4 I believe it was probably longer than 30 minutes.  
5 Q. All right. Let's go ahead and have you take  
6 a look at Exhibit 10. It's in the notebook there in  
7 front of you.  
8 (Exhibit 10 identified)  
9 BY MR. GOSMAN:  
10 Q. And while you're getting to that, do you know  
11 Marissa Torczon?  
12 A. Yes.  
13 Q. Did you see her there that night?  
14 A. Yes.  
15 Q. Did you understand that she was keeping a  
16 record of the discussions about the entry plan and the  
17 warrant service?  
18 A. Yes.  
19 MR. THOMPSON: Objection as to form.  
20 Go ahead.  
21 THE WITNESS: Yes.  
22 BY MR. GOSMAN:  
23 Q. I'll represent to you that Exhibit 10 is that  
24 record.  
25 Would you take a look at the list there on

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1 the left-hand column and let me know if, in fact, you  
2 were assigned the entry team that night.  
3 MS. WESTBY: Object to the form of the  
4 question. Misstates the testimony and evidence.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: It has my name there and it  
7 says entry.  
8 BY MR. GOSMAN:  
9 Q. Okay. And were you assigned as part of the  
10 entry team?  
11 A. That night I was.  
12 Q. All right. Was there any discussion held in  
13 your presence about who should participate on the entry  
14 team?  
15 A. Yes, that was part of the prep.  
16 Q. All right. And what was -- do you remember  
17 what factors were considered in selecting the entry  
18 team?  
19 A. I don't know what the factors were.  
20 Q. All right. My question really is this: Had  
21 the entry team already been selected when you arrived?  
22 A. No.  
23 Q. Did they ask you if you wanted to be on the  
24 entry team?  
25 Did Sergeant Chretien, for instance, ask you

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1 if you wanted to be on the entry team?  
2 A. I believe the positions were already -- they  
3 were assigned as we were sitting down there on the  
4 prep.  
5 Q. All right. So there wasn't really any  
6 discussion about who wants to serve where and who feels  
7 like they would best -- be in the best position to,  
8 say, deploy the flashbang device?  
9 A. Correct. There was no discussion as far as  
10 who fits what role better.  
11 Q. All right. You were assigned the position on  
12 the entry team, and that was without any feedback from  
13 you, correct?  
14 A. Correct.  
15 Q. Did you understand that this was a  
16 knock-and-announce warrant?  
17 A. Yes.  
18 Q. What does a knock-and-announce warrant mean  
19 to you, Officer?  
20 A. It means you knock on the door, state your  
21 presence, what you were there for.  
22 Q. Okay. Then what?  
23 A. Give them a reasonable amount of time. If no  
24 contact is made, then that's when entry would be made.  
25 Q. What's a reasonable amount of time?

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1 A. Reasonable amount of time is subjective to  
2 the situation at hand.  
3 Q. Is there any minimum, as far as you know?  
4 A. No.  
5 Q. Well, you were on that door that night,  
6 correct?  
7 A. Correct.  
8 Q. And you knocked on the door?  
9 A. Correct.  
10 Q. And you announced, "Police, search warrant"?  
11 A. I did.  
12 Q. All right. Let me back up for just a second.  
13 Did you see Tricia Wachsmuth before you  
14 knocked on the door?  
15 A. Would I be able to recognize her prior to  
16 that?  
17 Q. No. Let me put it this way: Did you see  
18 someone in the house sitting on the couch as you  
19 approached the front door?  
20 A. Yes.  
21 Q. And what was that person doing?  
22 A. Sitting on the couch.  
23 Q. Was she looking -- he or she looking out the  
24 window?  
25 A. When we started up to the house, the dog

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1 alerted to our presence. And then I saw a female reach  
2 back, grab the dog, pull the shades back.  
3 Q. Where were you when that happened?  
4 A. On the front stoop.  
5 Q. How far was she away from the door?  
6 A. Estimate from that window to the front door,  
7 probably six feet.  
8 Q. Okay. You saw her in the window. Was this  
9 before you knocked?  
10 A. Yes.  
11 Q. And you -- did you then immediately knock on  
12 the door?  
13 A. Yes.  
14 Q. And you announced -- what were your words?  
15 A. "Powell Police Department. We have a search  
16 warrant."  
17 Q. Okay. And what happened next?  
18 A. There was a delay of about five to six  
19 seconds and then the door was breached.  
20 Q. And where was -- did you go in the house  
21 first?  
22 A. I was the first one in.  
23 Q. Where was Tricia Wachsmuth?  
24 A. She was standing facing towards the kitchen  
25 about three feet from the couch headed towards the

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1 kitchen.  
2 Q. She was, what, now, I'm sorry? She was  
3 standing about three feet from the kitchen?  
4 A. She was standing three feet from the couch,  
5 approximately three feet from the couch, and she was  
6 heading towards the kitchen.  
7 Q. Okay. All right. So what did you do?  
8 A. At that time, I had my weapon when I entered  
9 the house, ordered her down.  
10 Q. Uh-huh.  
11 A. At that point, I slung my rifle, took hold  
12 of her left arm and directed her to the couch, where  
13 she was sat back down and told not to move.  
14 Q. Had the other officers entered the room at  
15 this time?  
16 A. I'm not sure. I'm assuming yes.  
17 Q. Well, they were right behind you, correct?  
18 A. It's a dynamic entry, yes.  
19 Q. And did you have your rifle in the cover  
20 position, as you entered the house?  
21 A. When I entered the house, I was at the ready.  
22 Q. All right. Ready is like this?  
23 A. Ready is --  
24 Q. Describe it. I'm sorry.  
25 A. Ready is when the rifle -- butt stocks in the

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1 pocket of the shoulder, weapon is raised, and you're  
2 basically searching in front of you. You don't have  
3 the sites fixed on anything.  
4 Q. But the weapon is raised in the area where  
5 you're looking?  
6 A. Correct.  
7 Q. And did you tell me that you slung your  
8 weapon --  
9 A. Yes.  
10 Q. -- before you took control of Mrs. Wachsmuth?  
11 MS. WESTBY: Object to the form of the  
12 question.  
13 MR. THOMPSON: Join.  
14 BY MR. GOSMAN:  
15 Q. Is that correct?  
16 A. Correct.  
17 Q. And you then grabbed her by the hand?  
18 A. Her left arm.  
19 Q. Her left arm. And you -- did you sit her  
20 back down on the couch?  
21 A. Yes.  
22 Q. And I assume that during the period of time  
23 that it took you to sling your weapon and take hold of  
24 her arm and put her back on the couch that the entire  
25 entry team had made it into the house. Wouldn't that

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1 be a fair assumption?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 Go ahead if you know.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: I believe that it would be safe  
7 to say that the rest of the team was either through the  
8 doorway or making entry at that point.  
9 BY MR. GOSMAN:  
10 Q. What did you do after you sat Ms. Wachsmuth  
11 down?  
12 A. Told her not to move.  
13 Q. What did she say?  
14 A. She didn't say anything.  
15 Q. Was she compliant?  
16 A. I believe so.  
17 Q. All right. Then what did you do after you  
18 told her to sit down?  
19 A. And I resumed my role as the clearing officer  
20 and retained my rifle again and entered further into  
21 the house.  
22 Q. Behind everybody else?  
23 A. No.  
24 Q. Had everybody else sort of stopped there at  
25 the -- inside the front door waiting for you to resume

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1 your position in clearing the house?

2 A. I don't know what they did. My reaction was

3 so quick that -- and I didn't want them bottlenecked in

4 the entryway. So it was a pretty quick movement

5 through the house --

6 Q. Okay.

7 A. -- for me.

8 Q. This was after you got Tricia sat back down?

9 A. Correct.

10 Q. Did you turn her over to another officer?

11 A. That would --

12 MS. WESTBY: Object to the form of the

13 question. Go ahead.

14 MR. THOMPSON: Join.

15 THE WITNESS: When she was told not to move,

16 then I was assuming that the last officers through the

17 door, whoever was going to be taking that sector on

18 that side of the room, would take over.

19 BY MR. GOSMAN:

20 Q. So you left her alone. You turned around and

21 left her then --

22 MS. WESTBY: Object --

23 MR. GOSMAN: -- assuming that somebody was

24 going to take control of her?

25 MS. WESTBY: Object to the form of the

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1 question.

2 THE WITNESS: She was not left alone, if

3 that's what you're implying.

4 BY MR. GOSMAN:

5 Q. Well, there was no officer that was

6 specifically there controlling her?

7 A. There was no specific officer assigned to

8 controlling her.

9 Q. Well, of course -- well, let me ask you this:

10 When you do a dynamic entry and you find a suspect, you

11 want to keep control of them, right, and you don't want

12 to just let them go sitting somewhere in the house by

13 themselves?

14 A. And that's not what happened.

15 Q. No. But on the other hand, you did turn away

16 from her and leave her before she was handed off to

17 another officer --

18 MS. WESTBY: Object to the form of the

19 question.

20 MR. THOMPSON: Join.

21 BY MR. GOSMAN:

22 Q. -- correct?

23 A. She was not specifically handed over to a

24 specific officer.

25 Q. No, because you just turned and after you sat

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1 her down in the house and told her not to move on the

2 couch and told her not to move, you turned away from

3 her and began your clearing operations?

4 A. Correct.

5 MS. WESTBY: Object to the form of the

6 question.

7 Go ahead.

8 BY MR. GOSMAN:

9 Q. So, where did you go first?

10 Let me back up for a second and ask: When

11 you say you began clearing operations, again, I assume

12 you got your rifle off your shoulder?

13 A. Off my shoulder, right.

14 Q. Well, it was on the sling. You had a sling

15 over your shoulder, didn't you?

16 A. I had it slung in front of me.

17 Q. All right. I see. And so was it across your

18 chest?

19 A. Yes.

20 Q. All right. And so you grabbed the rifle

21 again and you brought it to the ready position and you

22 continued searching the house?

23 A. Correct.

24 Q. Were the other officers holding their long

25 rifles in the ready position as they entered the house

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1 and began clearing operations?

2 A. I don't know what the other officers were

3 doing. They were all trained to be holding them at the

4 ready position, or at the alert when entering into any

5 type of room where there's unknown suspects.

6 Q. All right. Did you see any other officers in

7 the house when you resumed the clearing operation?

8 A. Yes.

9 Q. Who did you see?

10 A. I believe I saw Officer Danzer and

11 Officer Hall off to my left.

12 Q. Okay. What were they doing?

13 A. They were clearing as well.

14 Q. Okay. And where did you go?

15 A. I started through the living room and headed

16 towards the kitchen.

17 Q. You were in the living room, correct?

18 A. Correct. So I went through the remainder of

19 the living room and headed towards the kitchen.

20 Q. Took the few steps that it took to get

21 through the living room and into the kitchen.

22 Was there anything left to do in the living

23 room after you saw Tricia Wachsmuth, as you say,

24 three feet from the couch?

25 MS. WESTBY: Object to the form of the

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1 question.  
2 THE WITNESS: We I, there's corners that you  
3 have to clear, there's obstacles that you have to clear  
4 behind couches.  
5 BY MR. GOSMAN:  
6 Q. Did you do that?  
7 A. Yes.  
8 Q. I mean, did you actually go look behind any  
9 of the furniture in the room?  
10 A. Yes.  
11 Q. And then you went in to the kitchen?  
12 A. No. I paused at the edge of the living room  
13 because there was a hallway with three doors coming off  
14 of it, one into the bathroom and one off of each room.  
15 Q. All right. You paused there, and what did  
16 you do?  
17 A. Waited for the rest of the officers to clear  
18 that area before moving further into the house.  
19 Q. Okay. And so then you went into the kitchen?  
20 A. Yes.  
21 Q. All right. You saw the officers had cleared  
22 the three rooms before you went into the kitchen?  
23 A. It was stated that they were cleared.  
24 Q. All right. And who stated it?  
25 A. Officer Danzer and Officer Hall.

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1 Q. Okay. Were they the ones that cleared those  
2 three rooms, as far as you know?  
3 A. As far as I know.  
4 Q. All right. Where was everybody else?  
5 A. They were filing and taking over different  
6 positions so other officers could move up.  
7 Q. Did you all go into the house one after  
8 another; isn't that the purpose of a dynamic entry?  
9 A. There's only so many officers that you can  
10 get through a doorway.  
11 Q. Well, single file, you can do it all day  
12 long, right?  
13 A. Correct.  
14 Q. And so did the officers from the entry team  
15 all go into the house immediately after the door was  
16 breached?  
17 A. I believe so.  
18 MR. THOMPSON: Object to the form of the  
19 question.  
20 BY MR. GOSMAN:  
21 Q. And you say Hall and Danzer. What happened  
22 to the other three men on the entry team?  
23 A. I believe they were somewhere behind me.  
24 Q. Well, you grabbed Tricia Wachsmuth, you took  
25 your gun off -- from the ready position, you've

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1 strapped it around the front of your chest and you sat  
2 her down. And that had to take a few seconds, correct?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: Probably took about less than a  
7 few seconds, because I don't have to strap it to my  
8 chest. It was already slung across my chest. All I  
9 have to do is take it off my shoulder.  
10 BY MR. GOSMAN:  
11 Q. And in that timeframe, you didn't see any  
12 other officers entering the house?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Join.  
16 THE WITNESS: No.  
17 BY MR. GOSMAN:  
18 Q. You did not.  
19 And as you began clearing the rest of the  
20 living room, checking behind the furniture, et cetera,  
21 you didn't see any of the other officers enter the  
22 house?  
23 A. No, I didn't. I believe they were already in  
24 the living room by that time.  
25 Q. Well, they would have been in the living room

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1 with you, correct?  
2 A. Correct.  
3 Q. And that room is, what, about 120 square  
4 feet?  
5 A. I'm not sure of the dimensions.  
6 Q. All right. It's not very big, is it?  
7 A. It's not very big, no.  
8 MS. WESTBY: Will you please let him finish  
9 his answer before you talk over him?  
10 MR. GOSMAN: Sorry, I will.  
11 BY MR. GOSMAN:  
12 Q. And so you believe the officers were in the  
13 living room with you, but you didn't see them. Is that  
14 your testimony?  
15 A. I did see Officer Danzer and Officer Hall off  
16 to my left.  
17 Q. Right. And there were three other officers  
18 involved in the entry team?  
19 A. That would have been behind me, one probably  
20 covering the door that we breached. So there would  
21 have been two others that would have had to take up  
22 positions with inside the living room.  
23 Q. Oh, so one of the officers is assigned to  
24 cover the door that you've entered?  
25 A. In a dynamic entry, yes.

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1 Q. That would have been Officer Miner?  
2 A. I'm not sure.  
3 Q. Well, he was the one that breached the door.  
4 Isn't the door breacher the one that goes in last?  
5 A. Usually.  
6 Q. All right.  
7 A. But I'm not sure what position he was in when  
8 he entered the house.  
9 Q. Okay. Did you go into the kitchen alone?  
10 A. No.  
11 Q. Who was with you?  
12 A. Officer Danzer.  
13 Q. And where was Officer Hall?  
14 A. I believe he was holding position in between  
15 the two rooms in the hallway.  
16 Q. Okay. And did you see any other officers in  
17 the house at that time?  
18 A. I saw once Officer Danzer and I made way into  
19 the kitchen, we posted up on a door, and at that time I  
20 saw Sergeant Eckerdt with Mrs. Wachsmuth. And I saw  
21 Sergeant Chretien in the living room.  
22 Officer Danzer was in the kitchen next to the  
23 unlocked back door to the basement, the basement entry  
24 door. And Officer Hall was back by that hallway.  
25 Q. When you stacked up on the door, you were

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1 Number 1. Who was behind you?  
2 A. That would have been Officer Miner.  
3 Q. He --  
4 A. Are we talking prior to entry in the house?  
5 Q. Yes. Do you know who was behind him?  
6 A. No.  
7 Q. All right. Let's go ahead and take one of  
8 those sheets of paper there, and I'm going to have you  
9 draw the inside of the house, and we're going to go  
10 forward to the time that you have cleared the kitchen.  
11 And I want you to show me where the officers were that  
12 you remember.  
13 A. (Witness complies.)  
14 Q. And, Officer, if you could go ahead and  
15 identify each of these persons that you've placed on  
16 the map, who was who.  
17 A. Sergeant Roy Eckerdt, Number 10.  
18 That would have been Sergeant Chretien,  
19 Number 6.  
20 Q. Can you put six and Chretien off to the side,  
21 outside the diagram.  
22 A. (Witness complies.)  
23 Q. Oh, these are their police officer numbers?  
24 A. Uh-huh.  
25 Q. PO number. Okay.

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1 And Eckerdt is 10.  
2 Who is that last person?  
3 A. Danzer.  
4 Q. Danzer, okay. And where were you, again?  
5 A. Right here by the back door.  
6 Q. Oh, yes, right. Okay.  
7 All right. Did you see from that position --  
8 well, let's back up for just a second.  
9 Is Tricia Wachsmuth sitting on the couch at  
10 this time?  
11 A. Suspect.  
12 Q. Suspect. That's fine.  
13 All right. And did you see Sergeant Chretien  
14 at any point come into the room and speak to Tricia  
15 Wachsmuth?  
16 A. Did I see that? No.  
17 Q. You did not see that?  
18 A. I did not see it.  
19 Q. What were you -- what were you doing, that --  
20 we understand that Sergeant Chretien came into the  
21 living room shortly after this timeframe that you have  
22 diagrammed here and began speaking to Tricia Wachsmuth.  
23 What did you do that prevented you from  
24 seeing that?  
25 A. Well, I was focused on the entry door to the

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1 basement.  
2 Q. Entry door to the basement.  
3 A. So I didn't see anyone speaking.  
4 Q. Did you go down the stairs with  
5 Officer Chretien and Tricia Wachsmuth?  
6 A. I went downstairs with Officer Danzer and  
7 myself, and the suspect opened the door, turned on the  
8 light and started down the stairs and stated that,  
9 "See, there's no one else down here."  
10 Q. Huh. Okay. So she just got up from the  
11 couch, came over and turned on the light and said,  
12 "See, there's nobody else down here." Is that your  
13 testimony?  
14 A. That's my testimony.  
15 Q. All right. Thank you.  
16 Did anybody point a gun at her while she got  
17 up and just walked over to the door like that?  
18 A. No.  
19 Q. And you didn't hear Chretien say, Get up and  
20 you're going downstairs first?  
21 MR. THOMPSON: Objection as to the form.  
22 MS. WESTBY: And I join. Go ahead.  
23 THE WITNESS: I heard Sergeant Chretien ask  
24 the suspect if there was anyone else in the house, to  
25 which I heard her say, "There's no one else in the

<p>KIRK CHAPMAN - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>Page 57</p> <p>1 house." 2 At that time, I relayed to the other officers 3 that the basement door was unlocked, which we had 4 information that if the door was unlocked, that there 5 is probably somebody down there -- 6 BY MR. GOSMAN: 7 Q. That -- 8 A. -- because that room is not unlocked. 9 MS. WESTBY: You need to let him finish his 10 answer. 11 MR. GOSMAN: Yeah, I do. And I'm sorry. 12 THE WITNESS: And then I heard 13 Sergeant Chretien ask her again if there was anyone in 14 the house or downstairs. I did not hear her answer at 15 that time. 16 And at that point, is when I saw her walk in 17 front of Officer Danzer and myself, open up the 18 basement door, turn on the light, and she walked -- 19 started to go down the stairs. 20 BY MR. GOSMAN: 21 Q. Okay. And you all just followed her down the 22 stairs? 23 A. We're not going to let her go into a room 24 that we haven't cleared. 25 Q. Well, I assume, then, by your saying that,</p>	<p>KIRK CHAPMAN - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>Page 59</p> <p>1 Miner filed. You're the first officer to mention that, 2 I will say that in all rights. 3 Were you the one that tried the door to the 4 basement? 5 A. We could see that the hasp and the paddle 6 lock were not on. 7 Q. Who is we? 8 A. Officer Danzer and myself. 9 Q. Did you communicate this to Officer Chretien? 10 A. Yes. 11 Q. So it's your testimony that you said to 12 Officer Chretien, oh, by the way, the door is unlocked 13 to the basement? 14 MR. THOMPSON: Objection as to the form. 15 MS. WESTBY: Join. 16 MR. THOMPSON: Misstates his testimony. 17 THE WITNESS: The form would have been 18 verbal, and it would have been the basement door is 19 unsecure. 20 BY MR. GOSMAN: 21 Q. And did Officer Chretien understand what that 22 meant? 23 MR. THOMPSON: Objection as to form. 24 MS. WESTBY: Join. 25 THE WITNESS: Did he understand? I'm not</p>
<p>KIRK CHAPMAN - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>Page 58</p> <p>1 that you mean, yes. 2 A. Yes. 3 Q. You just followed her down the stairs? 4 A. Correct. 5 Q. All right. I want to go back and see some of 6 this, and take it one step at a time here. 7 MR. GOSMAN: Can we go back up? 8 THE REPORTER: Can we go off the record, 9 then? 10 MR. GOSMAN: Yes. 11 (Discussion held off the 12 record.) 13 BY MR. GOSMAN: 14 Q. Okay. So what information, Officer, did you 15 have that if the door was unlocked, somebody was 16 probably down there? 17 A. That would have been the information that was 18 relayed in the prep prior to the service of the 19 warrant. It was stated that from the CI to Officer 20 Miner that if the base -- the door to the basement has 21 a hasp and lock on it, and that that room is not 22 unlocked unless there's usually somebody down there 23 because of the paranoid situation of the subjects. 24 Q. Okay. All right. And I assume, again, if 25 that information either is or isn't in the reports that</p>	<p>KIRK CHAPMAN - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>Page 60</p> <p>1 sure what his mental capacity was at that time. 2 BY MR. GOSMAN: 3 Q. Okay. And I'm not sure what it was either. 4 But we'll pass on that. 5 Let me ask this question: Was Officer 6 Chretien aware, as far as you know, that if the door 7 was unlocked to the basement, that there was probably 8 someone down there? 9 A. I believe since -- 10 MR. THOMPSON: Hold on for a second. 11 Objection as to the form. 12 Go ahead. 13 THE WITNESS: Since it was relayed in the 14 prep prior to that, that that information was passed 15 on. 16 BY MR. GOSMAN: 17 Q. Did you see that Officer Chretien was present 18 when that information was passed on? 19 A. Yes. 20 Q. And was it directed to the entire group? 21 A. Yes. 22 Q. So Officer Chretien, then, was aware when 23 Tricia Wachsmuth led you all downstairs, that you were 24 going into an uncleared room where there was probably a 25 paranoid suspect who was armed?</p>

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1 MR. THOMPSON: Objection as to the form.  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 BY MR. GOSMAN:  
5 Q. I mean, that certainly is a realistic  
6 scenario, isn't it?  
7 MR. THOMPSON: Objection as to form.  
8 MS. WESTBY: Objection to the form of  
9 question, argumentative, harassing.  
10 BY MR. GOSMAN:  
11 Q. Give it your best shot.  
12 A. Well, you're going to have to repeat that.  
13 Q. Okay. Based on what you've told me about  
14 this information being disseminated in the meeting and  
15 Officer Chretien being present, he was probably aware  
16 that Tricia Wachsmuth was leading the officers into an  
17 unsecured area with a paranoid suspect, correct?  
18 MR. THOMPSON: Objection as to form. Calls  
19 for speculation.  
20 MS. WESTBY: And completely misstates the  
21 testimony and the evidence  
22 BY MR. GOSMAN:  
23 Q. Be that as it may.  
24 A. I believe that Sergeant Chretien, in asking  
25 if there was anyone else in the house or downstairs,

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1 was looking for some type of truthfulness from  
2 Ms. Wachsmuth.  
3 I did not hear her answer his question, but  
4 as soon as he asked the question, I did not hear the  
5 answer, then I saw Tricia Wachsmuth walk between  
6 Officer Danzer and myself, open up the door, turn on  
7 the light, and turn around and say, "There is no one  
8 else down there."  
9 Q. Okay. Who went downstairs?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 BY MR. GOSMAN:  
13 Q. And I mean we know that Tricia Wachsmuth went  
14 first, right?  
15 A. She led the way down about four steps and she  
16 stopped and paused. And at that time, Officer Danzer  
17 and myself went around her. And we cleared the  
18 remainder of the downstairs portion.  
19 Q. All right. Well, that wasn't my question at  
20 all, but thanks for that.  
21 What I wanted to know is who was with you  
22 when you went down the stairs, Officer.  
23 A. Officer Danzer was in front of me.  
24 Q. Yes.  
25 A. Tricia Wachsmuth was in front of him.

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1 Q. We know that.  
2 A. I was behind Officer Danzer. And when she  
3 stopped halfway down the stairs, that's when  
4 Officer Danzer and I went around her and continued the  
5 clearing and search of the basement.  
6 Q. So you just left her alone on the stairs  
7 again?  
8 MR. THOMPSON: Objection as to form.  
9 MS. WESTBY: Join.  
10 BY MR. GOSMAN:  
11 Q. Well, you went around her and just left her  
12 there and cleared the basement --  
13 MS. WESTBY: And, again, please, be  
14 professional.  
15 BY MR. GOSMAN:  
16 Q. Is that your testimony?  
17 MS. WESTBY: Object to the form of the  
18 question and your behavior.  
19 Go ahead.  
20 THE WITNESS: What was the question?  
21 BY MR. GOSMAN:  
22 Q. You left her alone on the stairs to finish  
23 clearing the basement -- or to clear the basement,  
24 correct?  
25 MR. THOMPSON: Objection as to form.

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1 MS. WESTBY: Join.  
2 THE WITNESS: Yes, I left her there on the  
3 stairs so I could go continue clearing the basement.  
4 BY MR. GOSMAN:  
5 Q. Had Tricia Wachsmuth been handcuffed at that  
6 time?  
7 A. Unaware.  
8 Q. Okay.  
9 A. When she was going down the stairs, no,  
10 because she opened the door and turned the light on.  
11 Q. Yeah. All right. Take a look at Exhibit 10  
12 again for a second.  
13 Do you see the statement there under  
14 knock-and-announce, "everyone gets cuffed"?  
15 A. Yeah, right there.  
16 Q. That's sort of standard procedure, isn't it,  
17 in a dynamic entry?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Join.  
21 MS. WESTBY: Go ahead.  
22 THE WITNESS: Is it standard procedure?  
23 BY MR. GOSMAN:  
24 Q. Yes, to secure the suspects.  
25 A. In what standard procedure are you going off

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1 of?  
2 Q. I'm talking about SWAT dynamic entry,  
3 anything that involves a dangerous situation where  
4 you're there with extra body armor, long guns,  
5 diversion devices and you've got a suspect that you've  
6 taken control of in the house --  
7 MS. WESTBY: Objection --  
8 BY MR. GOSMAN:  
9 Q. -- and this is a suspect.  
10 A. I cannot testify to what other department's  
11 standard procedures are.  
12 Q. Okay. That's fine.  
13 Well, in any event, it appears from  
14 Exhibit 10 that everyone was to be cuffed, correct?  
15 MS. WESTBY: Object to the form of the  
16 question. You're asking him to speculate about what's  
17 on this document --  
18 MR. GOSMAN: It's written there.  
19 MS. WESTBY: -- that he didn't prepare.  
20 MR. GOSMAN: Only one person can compare.  
21 MS. WESTBY: Object to the form of the  
22 question.  
23 THE WITNESS: I believe that Tricia Wachsmuth  
24 was cuffed. And I believe under any circumstances, it  
25 doesn't specify when they are cuffed.

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1 BY MR. GOSMAN:  
2 Q. All right. You didn't cuff her when you came  
3 in the house and first took control of her?  
4 A. I did not.  
5 MS. WESTBY: Object to the form of the  
6 question.  
7 MR. GOSMAN: And Eckerdt didn't cuff her when  
8 he took control of her?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 MR. THOMPSON: Join.  
12 THE WITNESS: And I cannot testify to what  
13 Sergeant Eckerdt did or did not do.  
14 BY MR. GOSMAN:  
15 Q. Even though you know she wasn't cuffed when  
16 she went down the stairs?  
17 A. Correct.  
18 Q. You didn't make any effort to stop her when  
19 she went between you and Danzer to go down the stairs?  
20 A. Well, it happened so quick that we were kind  
21 of -- well, I was, anyway, I was taken aback.  
22 Q. You're a professional there to execute a  
23 search warrant in a dynamic entry and you allow the  
24 suspect to walk past you and go down the stairs, and  
25 you're so taken aback that you didn't have time to

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1 react; is that your testimony?  
2 MS. WESTBY: Object to the form of the  
3 question. Argumentative, harassing.  
4 MR. THOMPSON: Join.  
5 MS. WESTBY: And, honestly, you know, I mean,  
6 you need to --  
7 THE WITNESS: Very tense, rapidly evolving,  
8 and, yes, she walked right in front of us, opened up  
9 the door. It was a split second and she was heading  
10 down the stairs.  
11 BY MR. GOSMAN:  
12 Q. Okay.  
13 A. With no time to react.  
14 Q. Well, and a few minutes ago, I asked the  
15 question -- I don't think I got an answer to it, maybe  
16 I did, but the question was: Who else was with you on  
17 the stairs besides Tricia, whom we know went first, and  
18 you and Officer Danzer?  
19 A. Well, I can only attest to who was in front  
20 of me, so those would be the officers.  
21 Q. You can only attest to those who were in  
22 front of you?  
23 A. Yes, because I do not have eyes in the back  
24 of my head.  
25 Q. Well, you went around Tricia Wachsmuth. Did

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1 you look back up the stairs or make any effort to see  
2 who was there to take over?  
3 MS. WESTBY: Object to the form of the  
4 question -- just a second. Object to the form of the  
5 question. Honestly, it's absolutely ridiculous.  
6 MR. GOSMAN: Yeah, it is ridiculous.  
7 MS. WESTBY: And I think the Court would be  
8 horrified at your behavior.  
9 MR. GOSMAN: Just leave off with the --  
10 MS. WESTBY: Please be professional. Please  
11 be professional and --  
12 MR. GOSMAN: -- allocution, okay.  
13 MS. WESTBY: Go ahead.  
14 THE WITNESS: Okay. I believe that my threat  
15 was more attained to what was down in the basement, if  
16 there was a threat. Everything else upstairs had  
17 already been cleared.  
18 So at that point -- and I knew that there was  
19 other officers up there in the house, in the kitchen --  
20 there was no reason for me to pause and look behind me  
21 when what was not cleared was in front of me.  
22 BY MR. GOSMAN:  
23 Q. Did you and Officer Danzer clear the basement  
24 alone?  
25 A. Yes.

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1 Q. All right. Draw me a picture of the bottom  
 2 of the stairs and the basement.  
 3 Yeah, we'll leave it right on that exhibit.  
 4 A. (Witness complies.)  
 5 Q. All right. Was there a wall on the  
 6 right-hand side of those stairs going down them?  
 7 A. Was there a wall on the right-hand side going  
 8 down them?  
 9 Q. Yes.  
 10 A. Yes.  
 11 Q. All right. Draw that in.  
 12 A. (Witness complies.)  
 13 Q. And there's a little square there at the  
 14 bottom of the stairs. Is that a landing?  
 15 A. Yes.  
 16 Q. All right. And was the stairway open so that  
 17 you could see into the basement from the -- what would  
 18 be the left-hand side of the stairwell going down the  
 19 stairs?  
 20 A. Yes, there was. Where the ceiling and the  
 21 stairs came down, that was open.  
 22 Q. All right. Did you go around the perimeter  
 23 of the basement when you went down there with Danzer?  
 24 A. Yes.  
 25 Q. How long did that take?

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1 A. As far as clearing this area right here?  
 2 Q. Uh-huh.  
 3 A. Not very long. Probably 30 seconds.  
 4 Q. Okay. Did you have any idea what Tricia  
 5 Wachsmuth was doing in that 30 seconds?  
 6 A. No.  
 7 Q. Okay. When did you see her again?  
 8 A. I didn't.  
 9 Q. You didn't see her again?  
 10 A. No.  
 11 Q. When you got to the basement and started  
 12 working your way around, I assume you were on the alert  
 13 for any other persons who would be there, correct?  
 14 A. Correct.  
 15 Q. Did you see any of the other officers in the  
 16 basement?  
 17 A. I believe at that point I saw -- I want to  
 18 say it was Officer Miner that came down there.  
 19 At that point, we had two open cubbies going  
 20 to a crawl space that was up off the ground that had  
 21 not been cleared. I entered from this side with my  
 22 weapon, crawled through the cubby and crawled through  
 23 on my stomach all the way around and out that cubby  
 24 there.  
 25 Q. All right. And before you went in the cubby

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1 hole, you saw Officer Miner in the basement?  
 2 A. Yes.  
 3 Q. Did you see Chretien?  
 4 A. Not at that time. It might have been --  
 5 Officer Chretien might have been there when I came out  
 6 of the other side.  
 7 Q. Okay. So Officer Chretien might have been  
 8 there when you got out of the other side.  
 9 Where was Officer Chretien if he was there?  
 10 A. He would have been right here in the room.  
 11 Q. Okay. Go ahead and put Chretien there and  
 12 Miner.  
 13 A. And of course we still had --  
 14 Q. Danzer.  
 15 A. (Witness complies.)  
 16 Q. And let's make it clear that the view that  
 17 you've given me with these officers is the view that  
 18 you acquired when you came out of the cubby hole or the  
 19 crawl space, correct?  
 20 A. I'm not exactly sure if Sergeant Chretien was  
 21 down here at that point or not.  
 22 Q. I want to be clear about one thing. Did you  
 23 hear Officer Chretien say she's going first?  
 24 A. No, I didn't.  
 25 Q. Did you ever hear Officer Chretien apologize

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1 for sending Tricia Wachsmuth down the stairs first?  
 2 MR. THOMPSON: Objection as to the form.  
 3 MS. WESTBY: Objection as to form, misstates  
 4 the testimony.  
 5 Go ahead.  
 6 BY MR. GOSMAN:  
 7 Q. Yes, go ahead.  
 8 A. No, I didn't.  
 9 Q. That would be thoroughly inconsistent with  
 10 what you just told me, wouldn't it?  
 11 MS. WESTBY: Object to the form of the  
 12 question.  
 13 MR. GOSMAN: Well, all right.  
 14 MS. WESTBY: It's not inconsistent.  
 15 BY MR. GOSMAN:  
 16 Q. Yes, well, because you saw Ms. Wachsmuth get  
 17 up without any prompting and pass between you before  
 18 you even had time to react and turn on the light and go  
 19 downstairs.  
 20 MR. THOMPSON: Counsel, would you sit down  
 21 instead of standing over the witness.  
 22 MS. WESTBY: Be professional. honest to God.  
 23 MR. GOSMAN: Enough.  
 24 MS. WESTBY: Your behavior is --  
 25 MR. GOSMAN: I'll go ahead and sit down and

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1 I'll try to keep you quiet.  
2 THE WITNESS: And, again, how was that  
3 inconsistent?  
4 BY MR. GOSMAN:  
5 Q. Yes, well, because what I just said was  
6 Chretien apologized for sending Tricia Wachsmuth down  
7 the stairs first.  
8 A. And that's what you said.  
9 MS. WESTBY: Object.  
10 BY MR. GOSMAN:  
11 Q. Yeah, that's what I said. And I'm saying if  
12 that's true, that's inconsistent with what you said,  
13 isn't it, Officer?  
14 MS. WESTBY: Just a second.  
15 Object to the form of the question, misstates  
16 the testimony, misstates the evidence. Go ahead.  
17 THE WITNESS: I don't think anywhere in my  
18 testimony where I stated that Officer Chretien  
19 apologized for anything about what he did or did not  
20 do.  
21 BY MR. GOSMAN:  
22 Q. All right. That's fine.  
23 Okay. Did you participate in a debriefing  
24 after this incident was over?  
25 A. Yes.

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1 Q. Who was there?  
2 A. I believe everybody from the -- that was  
3 present.  
4 Q. Okay. And what was discussed?  
5 A. We were discussing as far as basically what  
6 people saw from their points of advantage, how the  
7 deployment of the flashbang went, how the people that  
8 were on the rear perimeter, what issues they had, and  
9 then the search team, how the search went.  
10 Q. Everything go A-okay?  
11 A. Well, there were some snags. We had  
12 Officer Bradley and Officer Lara and Detective Brown  
13 that were snagged up in the backyard.  
14 We had Officer Brilakis, who could not gain  
15 entry to the backyard from the gate because it was  
16 locked.  
17 Q. Was there any discuss on about the flashbang?  
18 A. Flashbang, how it was deployed, somebody said  
19 that a towel or something was smoldering at that time.  
20 I didn't see that, though.  
21 Q. Did you hear the smoke alarm go off?  
22 A. No, I didn't.  
23 Q. Did you have anything to do with going out to  
24 Tom Wachsmuth's place and picking up Bret?  
25 A. No, I didn't.

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1 Q. Were you part of the evidence gathering team?  
2 A. Yes.  
3 Q. Okay. What role did you play in that?  
4 A. I first started out with Officer Hall in Room  
5 Number 2. I designate it as Room Number 2, which would  
6 have been the guest room. He was searching and I was  
7 documenting at that time. And then when somebody would  
8 come in and take pictures -- pictures were taken --  
9 then the evidence was collected.  
10 Had another officer take over for there so I  
11 could assist Officer Miner in Room Number 1, which I  
12 designate as the master room or the main bedroom.  
13 And basically still maintain the same role as  
14 far as documenting what was found, where it was found,  
15 and assuring that pictures were taken prior to  
16 collecting.  
17 Q. Did you find any drugs in the upstairs, in  
18 the master bedroom?  
19 A. Yes.  
20 Q. What did you find?  
21 A. Found remnants of hash, found prescription  
22 bottles not associated with anyone that lived in the  
23 residence, marijuana stems, other drug paraphernalia,  
24 pipes with residue.  
25 Q. Did you find prescription bottles with

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1 prescription medication in them from someone other than  
2 persons who were at the residence?  
3 A. No, just empty bottles with other people's  
4 names on them.  
5 Q. Were they logged into evidence?  
6 A. Yes, they were.  
7 Q. All right. Let's turn to that exhibit for a  
8 second. Let's go to Exhibit 23.  
9 (Exhibit 23 identified)  
10 BY MR. GOSMAN:  
11 Q. Now, you're talking about in the master  
12 bedroom, right?  
13 A. Correct.  
14 Q. So northeast bedroom. That would be the  
15 master bedroom; is that correct?  
16 A. Correct.  
17 Q. Okay. So let's see. There is one pill  
18 bottle -- let's see. Where did I see that?  
19 All right. Pill bottle, Tom Wachsmuth, next  
20 to TV. Do you know what that pill bottle was?  
21 A. I believe it was oxycodone.  
22 Q. Oxycodone. And it had Tom Wachsmuth's name  
23 on it?  
24 A. Correct.  
25 Q. Okay. And did you ever find out what that

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1 was about?  
2 A. I never did, no.  
3 Q. Okay. I think I'm done with you, Officer.  
4 Thank you very much for coming here today.  
5 A. All right. Would you like my diagram?  
6 Q. Yes, I would.  
7 A. Would you like me to sign it?  
8 Q. I would like you to go ahead and put the  
9 names of the officers in the basement there next to  
10 their officers' numbers. And you do not need to sign  
11 it.

(Proceedings concluded 2:53  
p.m., November 23, 2010)

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DEPONENT'S CERTIFICATE

1 I, KIRK CHAPMAN, do hereby certify, under  
2 penalty of perjury, that I have read the foregoing  
3 transcript of my testimony consisting of 77 pages,  
4 taken on November 23, 2010 and that the same is, with  
5 any changes noted below, a full, true and correct  
6 record of my deposition.

8	PAGE	LINE	CORRECTION	REASON FOR CORRECTION
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KIRK CHAPMAN Date

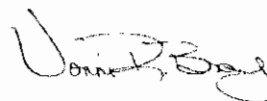
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CERTIFICATE

1 I, VONNI R. BRAY, Registered Professional  
2 Reporter, and Notary Public for the State of Montana,  
3 do hereby certify that KIRK CHAPMAN was by me first  
4 duly sworn to testify to the truth, the whole truth,  
5 and nothing but the truth;  
6 That the foregoing transcript, consisting of  
7 78 pages, is a true record of the testimony given by  
8 said deponent, together with all other proceedings  
9 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this 11th day of December, 2010.



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Kirk Chapman  
November 23, 2010

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## POWELL POLICE DEPARTMENT

250 N. CLARK ST POWELL, WY 82435 307-754-2212  
SUPPLEMENT 6

PLAINTIFF'S EXHIBIT  
# 23

**INVESTIGATION CONTINUED: Officer K. Chapman**

On February 24, 2009 I assisted in a search warrant at the residence located at 870 E North Street in Powell, Park County Wyoming. The following describes the events of the search and the officers activities and assignments during the search of the residence.

Assigned search officers were Officer Hall, Officer Miner. Their duties were to search assigned rooms for evidence pertaining to the search warrant. Officer Lara and Investigator Brown were assigned to take digital photos of the evidence as it was found. Officer McCaslin and myself were assigned in logging all the evidence, the location and the time it was found. We were also assigned to gather the evidence. Officer Miner and Sgt. Kent transported the evidence to the Powell LEC where it was secured into the established evidence lockers.

The rooms in the house were searched by a team of officers to insure that each room was systematically searched and all evidence was collected. The following rooms were searched by Officer Miner and I and, describes what was found and collected in each of our assigned rooms.

**Items found and collected from the NE bedroom**

Location	Description	Time
Bed	.45 Colt with 6 rounds	2158
Chest	.357 cal handgun with 6 rounds	2159
Closet/1 <sup>st</sup> shelf	Horse pipe	2159
On top of T.V	Glass pipe	2200
1 <sup>st</sup> drawer in dresser	Marijuana Grow Book	2201
Left side of T.V	Plastic bag w/ pill bottles	2202
Floor/Right of dresser	Browning rifle (unknown caliber)	2203
Floor/Right of dresser	12 GA shot gun	2204
Floor/ N side of room	Wooden box with Marijuana Leaf	2205
Night stand N. side	Dugout with one hitter	2206
Night stand N. side	Tire spike system (used by LE)	2207
Night stand N. side	Dugout with one hitter	2209
Night stand N. side	Colored glass bottle with leafy plant material	2210
Night stand N. side	Boxes of ammunition (various calibers)	2214
Night stand N. side	Ruger P85 handgun	2215
Night stand N. side	Pill bottle with leafy plant material	2215
Floor next to bed	Box of pictures	2216
Next to T.V	Pill bottle (Tom Wachsmuth)	2225
Night stand S. side	Pill bottle with .22 cal ammo	2227
Night stand S. side	Pill cutter	2228
Under bed	Box of Ammunition	2238
Under bed	Brown box with drug paraphernalia	2238
Under bed	Black box with drug paraphernalia	2238
Under bed	Rubber maid container with tar like substance	2238
Under bed	Leather man Knife on Rubber maid container	2238
Next to dresser	.45 cal ammunition w/ leather gun belt	2241
Next to dresser	12 GA shot gun ammo w/ belt	2241
Next to dresser	Box of .22 cal ammo	2241
Next to dresser	(2) 2 ft Fluorescent light	2245

Prepared By:  
P18 CHAPMAN, KIRK

Date:  
3/1/2009

Approved By:  
P06 CHRETIEN, MICHAEL

Date:  
3/2/2009

00023



## POWELL POLICE DEPARTMENT

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**Items found and collected from the bathroom**

Location	Description	Time
Bathroom medicine cabinet	Pill bottle wrapped in black tape	2250

**Items found and collected from the kitchen**

Location	Description	Time
Kitchen cabinet (west wall)	Miracle grow/plant fertilizers	2252
Kitchen by computer desk	Box containing stuffed animals and letter	2256
Kitchen computer desk	Computer Hewitt Packard CPU	2301

**Items found and collected from the basement**

Location	Description	Time
West wall	Grow lamps	2307
South wall (under stairs)	2 ft Fluorescent lamp	2308
South wall (under stairs)	Seed start grow box	2311
South wall (under stairs)	Box w/ grow light	2312
South wall (under stairs)	Grow light (active)	2313
South wall (under stairs)	Commercial power timer	2313
South wall (under stairs)	Box with a PH meter	2314
South wall (under stairs)	Plastic jug containing plant fertilizer	2315
South wall (under stairs)	2 Marijuana plants (growing)	2316

The following rooms were searched by Officers Hall and McCaslin and describes what was found and collected in each of their assigned rooms.

**Items found and collected from the SE bedroom**

Location	Description	Time
Dresser top	2 Starter potting samples (1 w/dead plant)	2153
Top dresser drawer	Grow light bulb	2154
Floor to right of dresser	Box w/ grow lamp, timer, electric cords, control box	2155
Bedroom floor	Gun cleaning box w/ Hydrocodone w/ .22 cal ammo	2158
Closet	Teddy bear w/ back seam open	2203
Closet	Heat lamp	2206
Closet	2 bags Miracle grow potting mix	2209

**Items found and collected from the Garage**

Location	Description	Time
Loft	The Grow Book	2233
West side top shelf	The encyclopedia of Psychoactive Drugs-Mushrooms	2235
Loft	Scale	2245
Loft	2 NIK drug test pouches	2248

**Items found and collected from the Living room**

Prepared By:

P18 CHAPMAN, KIRK

Date:

3/1/2009

Approved By:

P06 CHRETIEN, MICHAEL

Date:

3/2/2009

00024


**POWELL POLICE DEPARTMENT**

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Location	Description	Time
Coffee table	Marijuana Leaf	2255
Coffee table	Marijuana Grow Book	2259
Book Shelf (top shelf)	Beretta 21A .22 cal handgun (17753u)	2311
Book shelf	(12) High times Magazines	2316
Book shelf	1 marijuana book "The Cannibal"	2316
Book shelf	Note pad w/ sketches	2321
Book shelf	2 Drug Bibles	2321

Officer present during the search were as follows:

Officers Miner, Kent, Lara, Chretien, Hall, Danzer, Eckerdt, McCaslin, Brilakis, Blackmore, Bradley, Investigator Brown and myself.

All items were collected and taken to the Powell LEC where they were placed into the secure lockers until they can all be logged into the established evidence system.

**EVIDENCE:**

All items listed above

**UNDEVELOPED LEADS:**

None

**ATTACHMENTS:**

None

**STATUS:**

Closed

**VICTIM/WITNESS FOLLOW UP:**

None

Prepared By:

P18 CHAPMAN, KIRK

Date:

3/1/2009

Approved By:

P06 CHRETIEN, MICHAEL

Date:

3/2/2009

00025